

<p style="text-align: right;">Page 326</p> <p>1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>2</p> <p>3 In the Matter of:)</p> <p>4) File No. C-08400-A</p> <p>5 CATALYST HEDGED FUTURES)</p> <p>6 STRATEGY FUND)</p> <p>7</p> <p>8 WITNESS: Edward S. Walczak</p> <p>9 PAGES: 326 through 767</p> <p>10 PLACE: Securities and Exchange Commission</p> <p>11 175 West Jackson Boulevard,</p> <p>12 Chicago, Illinois</p> <p>13 DATE: Wednesday, April 4, 2018</p> <p>14</p> <p>15 The above entitled matter came on for hearing,</p> <p>16 pursuant to notice, at 8:31 a.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Diversified Reporting Services, Inc.</p> <p>25 (202) 467-9200</p>	<p style="text-align: right;">Page 328</p> <p>1 APPEARANCES (CONT.):</p> <p>2</p> <p>3 On behalf of the Witness:</p> <p>4 ZACHARY J. ZILIAK, ESQ.</p> <p>5 STEVEN BYLINA, ESQ.</p> <p>6 Ziliak Law, LLC</p> <p>7 141 West Jackson Boulevard, Suite 4048</p> <p>8 Chicago, IL 60604</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 327</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 JASON SCHMIDT, ESQ.</p> <p>5 DAVID BENSON, ESQ.</p> <p>6 TERRY MORAN, SSE</p> <p>7 JEFFREY SHANK, ESQ.</p> <p>8 Securities and Exchange Commission</p> <p>9 Division of Enforcement</p> <p>10 175 W. Jackson, Suite 1450</p> <p>11 Chicago, IL 60604</p> <p>12</p> <p>13 On behalf of the Commodity Futures Trading</p> <p>14 Commission:</p> <p>15 SAM WASSERMAN, ESQ.</p> <p>16 MICHAEL CAZAKOFF (via telephone)</p> <p>17 Commodity Futures Trading Commission</p> <p>18 140 Broadway</p> <p>19 New York, NY 10005</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 329</p> <p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS: EXAMINATION</p> <p>4 Edward S. Walczak 332</p> <p>5</p> <p>6 SEC EXHIBITS</p> <p>7 EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>8 22 E-mail chain 696</p> <p>9 25 Prin. Invest. Strat. 703</p> <p>10 32 12-9-16 e-mail 529</p> <p>11 34 3-15-17 e-mail 414</p> <p>12 39 12-9-16 e-mail 543</p> <p>13 40 E-mail 548</p> <p>14 44 Risk Report 547</p> <p>15 46 12-10-16 e-mail 583</p> <p>16 48 Risk Report 12-12-16 587</p> <p>17 49 Risk Report 12-13-16 593</p> <p>18 50 Risk Report 12-14-16 594</p> <p>19 54 1-30-17 e-mail 599</p> <p>20 66 2-15-17 e-mail 680</p> <p>21 67 Commentary, rough 683</p> <p>22 70 Commentary 685</p> <p>23 79 E-mail 713</p> <p>24 93 10-9-15 e-mail 370</p> <p>25 94 10-20-15 e-mail 377</p>

C O N T E N T S (C O N T.)

3	SEC EXHIBITS	
4	EXHIBITS: DESCRIPTION	IDENTIFIED
5 116	8-5-16 e-mail	449
6 117	7-22-16 e-mail	446
7 126	E-mail	717
8 142	10-30-14 e-mail	343
9 143	11-16-14 e-mail	367
10 144	3-16-16 e-mail	392
11 146	6-29-16 e-mail	444
12 152	Wayback Machine	492
13 153	Presentation	514
14 154	Slip Sheet	515
15 155	3-23-16 email	689

C O N T E N T S (C O N T.)

3	CFTC EXHIBITS	
4	EXHIBITS: DESCRIPTION	IDENTIFIED
5 2	Daily HFXAX Prices	603
6 3	Daily S&P Prices	603
7 4A	E-mail	605
8 4B	Attachment	605
9 5A	1-30-17 e-mail	610
10 5B	Spreadsheet	610
11 6A	2-9-17 e-mail	612
12 6B	Confirm	612
13 7	Trade confirm	613
14 8	Catalyst 0050194445	613
15 9	Catalyst 0050197444	613
16 10	Spreadsheet	619
17 11A	E-mail	620
18 11B	Attachment	621
19 12	Exposure summary	664

P R O C E E D I N G S

1 MR. SCHMIDT: So we are back on the
2 record 8:31 a.m. on April 4th.
3 Whereupon,
4 EDWARD S. WALCZAK
5 was recalled as a witness and, having previously
6 first duly sworn, was examined and testified
7 further as follows:
8 EXAMINATION
9 BY MR. SCHMIDT:
10 Q Good morning, Mr. Walczak.
11 A Good morning.
12 MR. SCHMIDT: Good morning, Counsel.
13 MR. ZILIAK: Good morning.
14 BY MR. SCHMIDT:
15 Q For the record, between the breaks
16 that
17 we've had and the testimony from yesterday to
18 today, you haven't had any substantive
19 discussions with staff of the SEC or the CFTC;
20 is that correct?
21 A That's correct.
22 Q Okay. And I mentioned before we went
23 on record, you have SEC Exhibit 1, CFTC Exhibit
24 1, and a copy of the SEC's formal order in front
25

1 of you, right?
2 A Yes, I do.
3 Q Okay. Any questions about those
4 documents occur to you overnight --
5 A No.
6 Q -- you want to ask? Everything all
7 right?
8 A Um-hum.
9 Q Okay. So what I want to start talking
10 about this morning is the concept of a soft
11 close. Okay? So this is something that was
12 discussed at Catalyst at the futures fund; is
13 that correct?
14 A Yes.
15 Q Okay.
16 MR. WASSERMAN: I'm sorry to
17 interrupt, but we forgot to dial in.
18 MR. SCHMIDT: Yeah, we did. Can we go
19 off the record please?
20 (A brief recess was taken.)
21 BY MR. SCHMIDT:
22 Q We are back on the record at 8:33 a.m.
23 The concept of a soft close.
24 Okay. So this was something that was
25 discussed internally at Catalyst and with you at

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1 the futures fund, correct?
 2 A Correct.
 3 Q Okay. So would you agree that
 4 Catalyst was in favor of a soft close and you
 5 were in -- in agreement with that?
 6 A Yes.
 7 Q Okay. Do you remember when the first
 8 discussion about the possibility of a soft close
 9 occurred?
 10 A No.
 11 Q Okay. Let me show you -- before we
 12 get to that, can you tell me what is the reason
 13 for a soft close?
 14 A Typically, the reason would be to
 15 limit asset inflows, soft close in the context
 16 of a mutual fund.
 17 Q Yeah. I'm not asking sort of
 18 generally the definition of a soft close.
 19 Why -- is that reason also applicable
 20 to the futures fund situation, or are you giving
 21 me a general reason for a soft close?
 22 A Both.
 23 Q Okay. So there isn't a difference?
 24 A No.
 25 Q Okay. All right. So just to be

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1 clear, my questions are about why a soft close
 2 would --
 3 A Okay.
 4 Q -- make since for the futures fund,
 5 and your answer is the same?
 6 A It is.
 7 Q Okay. Can you repeat it again just to
 8 make sure I understand?
 9 A Sure. A soft close is a tool that can
 10 be used to limit the inflows of assets to the
 11 futures fund.
 12 Q And why was that a good idea for the
 13 futures fund?
 14 A At the time of our discussions, we
 15 felt as though there may be a point at some
 16 point in the future that we needed to restrict
 17 flows and that in order to get in front of that
 18 point and not have to do it in a way that might
 19 be detrimental to shareholders that we should
 20 consider doing it --
 21 MR. CAZAKOFF: Good morning. This is
 22 Mike in New York.
 23 MR. SCHMIDT: Good morning, Mike.
 24 BY MR. SCHMIDT:
 25 Q Did you finish your answer?

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1 A I think so, yes.
 2 BY MR. BENSON:
 3 Q If I can, you said that a soft close
 4 is a tool to limit the addition of assets in the
 5 futures fund, right?
 6 A Yes.
 7 Q And you felt, collectively with
 8 Catalyst, that a soft close is a good idea
 9 because you were concerned that there may be a
 10 point in the future to restrict flows?
 11 A That there may be a point in the
 12 future where the fund size would interfere with
 13 the execution of the strategy.
 14 We were not at that point yet, but we
 15 were forward looking to that time.
 16 Q Okay. So, in other words, what you're
 17 saying is the soft close was a tool to ensure
 18 that the strategy could continue to be executed
 19 as you intended?
 20 A The soft close was intended to ensure
 21 that assets in the fund did not become so large
 22 as to restrict application of the strategy, that
 23 the soft close itself had no impact whatsoever
 24 on the strategy -- would not. Simply an asset
 25 management tool.

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1 Q Well, it would have an impact on the
 2 strategy in that it would allow you to continue
 3 to execute the strategy because, but for the
 4 soft close, the -- the assets would accumulate
 5 to such a size that it would be impossible for
 6 you to execute the strategy as you intended,
 7 right?
 8 A Again --
 9 MR. ZILIAK: That's not -- I'm sorry.
 10 You're not representing his testimony --
 11 MR. BENSON: I'm asking him a
 12 question.
 13 MR. ZILIAK: All right.
 14 THE WITNESS: The asset level is what
 15 we are concerned about.
 16 The effectiveness or -- the
 17 effectiveness of the soft close, uncertain.
 18 It was a tool we were going to use
 19 to -- for just that reason, so that we
 20 understood what tools were available to us to
 21 restrict the growth of assets should we need to
 22 at some point.
 23 BY MR. BENSON:
 24 Q Okay. So let me just cut straight to
 25 the chase here.

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1 The purpose of the soft close, or even
2 the discussion of the soft close, was that you
3 were concerned, as was Catalyst, that there
4 would be a point in time when the fund had
5 accumulated so many assets that it became
6 impossible or extremely difficult for you to
7 execute the strategy in the same manner with the
8 same success that you had historically?

9 A That's correct.

10 MR. BENSON: Thank you.

11 BY MR. MORAN:

12 Q Mr. Walczak, can I ask what metric
13 were you using? Were you looking at open
14 interest percentage of volume in the S&P pit?

15 A I'm not sure what --

16 Q To kind of gauge whether or not you
17 were -- the assets were too large to execute
18 your strategy?

19 A So we -- we looked at a variety of
20 factors. We looked at what was our collateral
21 availability at our FMC partners relative to our
22 typical collateral usage, in fact, our maximum
23 collateral usage.

24 We looked at volume percent of the
25 exchange, exchange volume, over periods of time.

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1 Q What was -- approximately what were
2 your -- what was Catalyst's percentage of the
3 volume?

4 A It varied significantly. I don't
5 recall exact numbers, but it varied
6 significantly.

7 Probably somewhere between 10 and 30.

8 BY MR. SCHMIDT:

9 Q I'm sorry. Volume of what?

10 A The percentage of the futures fund
11 volume as a percentage of contracts traded on
12 the exchange that we traded CME.

13 Q Total contracts traded?

14 A I believe that's the metric.

15 Q But isn't your strategy you look at
16 the market and -- in general, not exclusively,
17 but in general you're either doing the call
18 strategy or the put strategy, right? Depending
19 on where volatility is and where you think
20 it's -- where the sweet spot in the curve is,
21 right?

22 A Well, depending on where volatility
23 is, that's what drives the calls versus puts,
24 yes.

25 Q Okay. So most of the time, you're not

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1 equally weighted between calls and puts, right?

2 A That's correct.

3 Q Okay. So does it make sense to
4 compare the total volume of contracts in the pit
5 or just the total volumes of, say, your calls
6 versus the call volume in the pit?

7 A We used total volume, I believe. I
8 would have to check the calculation. At the
9 time what we used made sense to us.

10 Q Okay. Sitting here today, does it
11 make more sense to compare total -- your total
12 calls to the call volume as opposed to, if you
13 are doing almost exclusively calls at a certain
14 point in time, comparing it to the total volume
15 in the pit?

16 A Nothing has changed about my
17 perception -- you asked sitting here today.
18 Nothing has changed about my perception of what
19 the right number is to look at.

20 I think that gave us a fair
21 representation of our -- our share of exchange
22 volume.

23 BY MR. BENSON:

24 Q It would have been possible for you,
25 though, to look at your percentage of the market

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1 overall, as you did, right?

2 A Yes.

3 Q And it also would have been possible
4 for you to look at your trading as a percentage
5 of the call contracts, right?

6 A Yes.

7 Q And it also would have been possible
8 for you to look at your volume as a percentage
9 of the put contracts, right?

10 A Yes.

11 Q And did you ever break down your
12 volume to look at it beyond just the total
13 market?

14 A I think we may have. I don't recall
15 exactly. I recall we did total numbers.

16 Q Okay.

17 A And -- and in further answer to your
18 previous question, the -- my understanding of
19 exchange functions -- and, again, I may be
20 incorrect in this, but my understanding of
21 exchange functions and liquidity providers, puts
22 and calls have delta exposure and Greek exposure
23 from the market makers' point of view. So that
24 it, in my mind, makes more sense to look at
25 total volume than a particular call versus put

<p style="text-align: right;">Page 342</p> <p>1 type of volume.</p> <p>2 Again, I could be mistaken, but that</p> <p>3 was our -- one of my biases as we looked at</p> <p>4 volume.</p> <p>5 BY MR. SCHMIDT:</p> <p>6 Q Yeah. I guess I -- I don't follow</p> <p>7 that exactly.</p> <p>8 I -- my thinking, when Terry asked the</p> <p>9 question, was what you were looking at to assess</p> <p>10 potential capacity risk and size concerns to the</p> <p>11 futures fund, not what a market maker would be</p> <p>12 looking at.</p> <p>13 So I guess I don't follow how -- how a</p> <p>14 market maker might measure delta exposure of</p> <p>15 contracts in the pit would be relevant to the</p> <p>16 size of a particular fund that you managed.</p> <p>17 A So the typical counterparties to our</p> <p>18 trades are market-making firms.</p> <p>19 Q Okay.</p> <p>20 A And, again, my understanding of how a</p> <p>21 market maker provides liquidity on the exchange</p> <p>22 is by managing his delta exposure to his</p> <p>23 inventory to open contracts, put, call.</p> <p>24 He's going to hedge that -- that</p> <p>25 volume somewhere.</p>	<p style="text-align: right;">Page 344</p> <p>1 A Correct.</p> <p>2 Q And you're setting up -- you're</p> <p>3 basically setting an agenda for a call you're</p> <p>4 going to have with him?</p> <p>5 A Yes.</p> <p>6 Q All right. And this is approximately</p> <p>7 a year into after the creation of the futures</p> <p>8 fund?</p> <p>9 A Yes.</p> <p>10 Q Okay. And one of the things you want</p> <p>11 to talk to him about is -- it says HFXAX.</p> <p>12 That's the futures fund, right?</p> <p>13 A Correct.</p> <p>14 Q Okay. So the futures fund capacity</p> <p>15 and close options?</p> <p>16 A Yes.</p> <p>17 Q Right? Okay.</p> <p>18 Did you talk to him about that?</p> <p>19 A I don't recall. It's, I'll be honest,</p> <p>20 very likely we followed this agenda. I don't</p> <p>21 recall a specific discussion.</p> <p>22 Q So in October of 2014, capacity was</p> <p>23 already a concern for you as a portfolio manager</p> <p>24 as the futures fund?</p> <p>25 A Yes, it was.</p>
<p style="text-align: right;">Page 343</p> <p>1 So I am just explaining. Again, I may</p> <p>2 be mistaken. That is the point of view that I</p> <p>3 maintained when -- when I chose to look at total</p> <p>4 option volume.</p> <p>5 Q To be clear, I am not at all saying</p> <p>6 you're mistaken. I'm just trying to understand.</p> <p>7 A Sure. And that's the point of my</p> <p>8 answer as well.</p> <p>9 Q Okay. I get it. Thank you.</p> <p>10 MR. SCHMIDT: Terry, do you have</p> <p>11 anything else?</p> <p>12 MR. MORAN: No. Thank you.</p> <p>13 BY MR. SCHMIDT:</p> <p>14 Q Let me show you what's been marked as</p> <p>15 Exhibit 142.</p> <p>16 (SEC Exhibit No. 142 was</p> <p>17 marked for identification.)</p> <p>18 MR. SCHMIDT:</p> <p>19 Q So, for the record, this is an e-mail</p> <p>20 dated October 30, 2014.</p> <p>21 Do you recognize this document?</p> <p>22 A Yes, I do.</p> <p>23 Q This is an e-mail you sent to Mr.</p> <p>24 Szilagyi, S-z-i-l-a-g-y-i, October 30, 2014,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 345</p> <p>1 Q And you raised it with Catalyst?</p> <p>2 A I did.</p> <p>3 Q What did you say?</p> <p>4 A You'll notice the previous agenda I</p> <p>5 related to a new FCM account. And I do recall</p> <p>6 in that time frame our asset level was not a</p> <p>7 concern.</p> <p>8 What was a concern to me was our</p> <p>9 ability to expand our series of relationships</p> <p>10 with FCM partners in order that we had</p> <p>11 sufficient collateral capability to continue to</p> <p>12 trade the fund.</p> <p>13 That's why that other agenda item is</p> <p>14 on the same -- in fact, they were adjacent to</p> <p>15 each other on my list. That was my concern.</p> <p>16 Q So, for the record, the agenda item</p> <p>17 you're talking about says, KCG, comma, new FCM</p> <p>18 account?</p> <p>19 A Correct.</p> <p>20 Q Right? Okay.</p> <p>21 And you explained yesterday that FCM</p> <p>22 is futures commission merchant?</p> <p>23 A Correct.</p> <p>24 Q Okay. And I think what you're saying</p> <p>25 is that the way that's related to capacity is</p>

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1 that, if you can't enter into relationships with
2 new FCMs or get current FCMs to increase the
3 amount of margin they are going to give you,
4 that could cause a constraint on your ability to
5 execute the strategy?

6 A That's correct.

7 Q Okay. And that was a concern back in
8 October of 2014?

9 A Correct.

10 Q And so if -- if you couldn't establish
11 these new FCM relationships or could not
12 convince them to increase the margin available
13 to the futures fund, that was a risk of being
14 able to properly execute the strategy from that
15 point forward?

16 A That's correct.

17 Q Okay. So did you talk about that risk
18 to Mr. Szilagyi at Catalyst?

19 A I believe I did. As I said, I don't
20 remember the specific discussion, but I do
21 remember from these agenda items the general
22 nature.

23 Q Okay. And what was Mr. Szilagyi's
24 response to this capacity issue FCM risk that
25 you discussed with him?

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1 A I don't recall specifically in this
2 discussion.

3 I do recall he was -- he was open to
4 discussing and understanding the constraint.

5 Q Did he ever say: I don't believe you;
6 like, I don't think this is a problem; forget
7 about it?

8 A I don't recall that, no.

9 Q Okay. And, in fact, this was a --
10 this is an issue that didn't go away, right?

11 The capacity issue was something that
12 you continued to look at, continued to discuss
13 with Mr. Szilagyi for years?

14 A Yes. Not frequently. But you're
15 correct that the discussions continued.

16 Q Okay. And in those discussions, he
17 never said: Why are we still talking about
18 this? I told you it's not a problem?

19 A No, he did not.

20 Q Okay. Do you remember what the
21 outcome is of this call?

22 A I don't.

23 Q And this is before Ms. Rios has joined
24 you, correct?

25 A Correct.

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1 Q Okay.

2 MR. WASSERMAN: I just have quick
3 questions on that, if that's okay.

4 MR. SCHMIDT: Yep.

5 BY MR. WASSERMAN:

6 Q On the line that reads, HFXAX
7 capacity, comma, close options, am I reading
8 that right? Is it close option or close
9 options?

10 A Close options.

11 Q What does that mean?

12 A I think it means that I intended and
13 probably did discuss: All right, if we run into
14 a constraint, what can we do?

15 Again, I am still relatively at this
16 point unfamiliar with '40 Act vehicles.

17 And so my discussion was: I'm
18 concerned about FCM capacity; if it becomes a
19 problem, what can we do about that?

20 Q Excuse me. So when you say close
21 options, you're referring to cutting off inflows
22 to the fund?

23 A That's correct.

24 Q In May 2014, do you recall how big
25 the -- how -- excuse me.

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1 Do you recall what the AUM of the fund
2 was?

3 A No, I don't.

4 Q Do you recall how much money you made
5 in 2014?

6 A No, I don't.

7 Q Can you me a ballpark how much money
8 you made in 2014?

9 A Not really. It was small.

10 Q You make -- under the terms of your
11 contract, you make approximately \$8 million per
12 billion dollars of AUM, right?

13 A Yes. That's correct.

14 Q Did you make --

15 A Gross.

16 Q Did you make under \$8 million or over
17 \$8 million in 2014?

18 A Under 8 million.

19 Q So the fund was probably under a
20 billion dollars in -- at the end of 2014?

21 A Well -- and, again, the reason for my
22 response is that selling commissions in the
23 first year or two of the fund were significant.

24 They were greater than my portion of
25 the advisory fees for some period of time.

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1 Q I'm sorry. I don't follow what the
2 relationship is because selling commissions and
3 your advisory fee.
4 A Catalyst and I split advisory fees.
5 We also split sales commissions.
6 MR. SCHMIDT: Meaning you split the
7 obligation to pay the sales commissions?
8 THE WITNESS: Yes.
9 MR. SCHMIDT: Okay.
10 MR. WASSERMAN:
11 Q I see.
12 You're saying that sales
13 commissions -- 50 percent of sales commissions
14 paid the wholesalers came out of your cut of the
15 advisory fee?
16 A Correct.
17 Q Has that always been the case?
18 A Yes.
19 Q What -- what are those commissions
20 generally, or what did those commissions
21 generally amount to 2014?
22 A You mean -- aggregate amount, I don't
23 know.
24 I believe the payout is something like
25 40 or 50 basis points.

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1 Q Is it hundreds of thousands of dollars
2 that come out of your cut or millions of
3 dollars?
4 A Well, it depends on how -- the time
5 frame.
6 Q In 2014.
7 A In 2014 it was millions of dollars.
8 Q In 2014 millions of dollars came out
9 of your cut of the advisory fee to pay
10 wholesalers?
11 A That's the best of my recollection,
12 yes.
13 Q And, obviously, the AUM of the fund is
14 documented from its inception --
15 A Sure.
16 Q -- to today. I'm just trying to
17 establish your recollection --
18 A Right.
19 Q -- on the basis of this document.
20 To the best of your recollection, was
21 the AUM of the fund under a billion dollars at
22 the time Exhibit 142 was written?
23 A I don't know.
24 Q Do you recall in October of 2014 there
25 being any other factors besides FCM capacity

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1 that caused you concern about the fund's ability
2 to execute its strategy?
3 A No.
4 BY MR. SCHMIDT:
5 Q The line that says, "Close options," I
6 assume one of the options is a soft close, which
7 you've described?
8 A Yes.
9 Q What are other close options?
10 A Not my area of expertise. There's one
11 other that I know of. I guess I've heard it
12 described as a hard close.
13 Q Can you tell us what your
14 understanding of a hard close is?
15 A My understanding of a hard close would
16 be to simply refuse all new investment to the
17 fund.
18 Q The more extreme version of a soft
19 close?
20 A Yes.
21 Q Okay. Do you know if you ever
22 discussed the concept of a hard close with Mr.
23 Szilagyi or anybody else at Catalyst?
24 A I -- I believe I did.
25 Q Okay. Do you know, in the context of

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1 this discussion that's referenced in this e-mail
2 where you talked about close options, plural --
3 or at least it was on the agenda -- do you know
4 whether a hard close was discussed at that
5 point?
6 A I don't believe so.
7 Q Okay. Not as even an option?
8 A I can't say for sure the specifics of
9 the -- that discussion.
10 The reason I say I don't believe so is
11 I -- I am comfortable that at that time it was
12 very much a forward-looking discussion and not
13 something that was urgent and might require a
14 hard close.
15 Q The concept of a hard close wasn't
16 urgent at that point?
17 A That's correct.
18 In other words, the capacity issue was
19 not so urgent as to seriously discuss a hard
20 close. It was simply forward planning.
21 Q Got it.
22 BY MR. SHANK:
23 Q So when did the concept of hard close
24 come up?
25 A At some point later. I can't say

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1 exactly when, but as I testified previously, we
2 had ongoing discussions. Not frequent, but
3 ongoing.

4 And when I say "not frequent," not
5 daily or weekly or even monthly. But, generally
6 speaking, ongoing we would discuss from time to
7 time.

8 So at some point in those discussions,
9 certainly a hard close was mentioned, but I
10 can't specify exactly when.

11 Q Would it have been before 2017?

12 A I'm not sure.

13 Q Would it have before the losses that
14 were suffered in February of 2017?

15 A Probably.

16 Q Can you describe discussions you had
17 surrounding a hard close?

18 A I don't remember any detailed
19 discussions other than it was a -- an available
20 option for us or alternative for us to use.

21 Q Who were you having these discussions
22 with?

23 A Mr. Szilagyi.

24 Q Was it ever seriously contemplated
25 doing a hard close?

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1 A It was at one point. I think we had
2 identified an asset level that we felt we should
3 close the fund. I don't recall exactly what
4 that was, but I think there were discussions
5 certainly.

6 Q Can you approximate where that asset
7 level was?

8 A I don't -- I really don't recall
9 because we discussed -- in our discussions, many
10 levels were discussed at different types. So I
11 can't really pinpoint.

12 I do recall that we -- we talked about
13 different levels, and I believe we specified
14 one, but I don't recall exactly what it was.

15 Q What different levels did you discuss?

16 A I don't -- I just remember discussing
17 different levels.

18 Q Was it in the billions?

19 A Yes. Yes.

20 Q Less than five billion?

21 A I don't remember.

22 Q And what, if anything, did you do to
23 approximate what an appropriate level was for a
24 hard close?

25 A We -- we did, again, regular,

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1 routine -- I don't recall the exact frequency --
2 what I would call capacity analyses that looked
3 at volume numbers, FCM capacity.

4 I don't recall if there's anything
5 else that we looked at in there.

6 There were some subjective factors
7 that we discussed from time to time.

8 BY MR. SCHMIDT:

9 Q Did that capacity analyses -- or I
10 guess we'll take one. A capacity analysis, did
11 it result in any sort of written work product?

12 A Yes.

13 Q What does that look like?

14 A It was a -- I think a -- in some cases
15 a presentation deck kind of thing.

16 Q Okay.

17 A And we also -- we did do regular
18 volume reporting in terms of our percentage of
19 exchange volume, but we didn't always use that
20 to discuss. We simply tracked it.

21 Q Okay. So there were more formal, I
22 guess, slide deck presentations about capacity
23 analysis?

24 A Yes.

25 Q And then there were also volume

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1 reports?

2 A We simply reported on -- I mean,
3 again, Ms. Rios got numbers from the exchange
4 and did some basic calculations about how big
5 our volume was, and I'm pretty sure we reported
6 that on a monthly basis.

7 Q Did you say recorded or reported?

8 A Both.

9 Q Where did you record it?

10 A Well, all right. I think we have it
11 recorded somewhere.

12 Q It's like a spreadsheet on a shared
13 drive? What are you talking about?

14 A If it's somewhere, that's where it is.

15 Q Okay. So you have a shared drive in
16 Wisconsin at your Wisconsin office?

17 A Right.

18 Q And do you have, like, a folder for
19 capacity or volume, or where would this be
20 saved?

21 A Again, I -- as I sit here today, I
22 don't know for sure.

23 Q Okay. How did it get sent to you?
24 Did you get an e-mail with a summary?

25 A Typically I get an e-mail.

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1 Q All right. This is one of those
 2 things where -- just let me finish the question,
 3 just to be easy on the court reporter.
 4 A Sure. Sorry.
 5 Q So like an e-mail with a summary with
 6 or without a spreadsheet attached, is what I'm
 7 looking for.
 8 A I can't remember. I don't -- I don't
 9 specifically remember a spreadsheet being
 10 attached. That's why we have a shared drive.
 11 We typically don't lob spreadsheets
 12 all over the place on e-mails within the office.
 13 But typically it would be -- I do
 14 recall getting an e-mail specifying the volume.
 15 Q Okay. So other than the volume
 16 reports that you received, at least, via e-mail
 17 and the capacity analysis slide decks, where
 18 else would these capacity analyses or
 19 discussions be recorded in writing?
 20 That was the original question, where
 21 is it in writing.
 22 So you've given me two spots.
 23 Anywhere else?
 24 A Sure. Not that I'm aware of.
 25 Q Okay. And how many of the slide decks

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1 do you remember?
 2 A More than one.
 3 Q Okay. Good. More than ten?
 4 A No.
 5 Q More than five?
 6 A I'm not sure.
 7 Q Okay.
 8 BY MR. WASSERMAN:
 9 Q This shared drive that you're
 10 referring to, is that a drive that's accessible
 11 from New York?
 12 A No. It can be, but, to my knowledge,
 13 at this point it's not.
 14 Q So your office in Wisconsin is you,
 15 Ms. Rios, Mr. Saffrin. Anyone else?
 16 A We use August Ewald as kind of a
 17 backup to Daniel.
 18 Q And everyone has their own computer?
 19 A Yes.
 20 Q So on -- everyone can access that same
 21 shared folder that you're referring to?
 22 A Well, not everyone.
 23 I control access to it, and I know
 24 that Ms. Rios has access to the folder.
 25 I don't recall which folder or

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1 folders, if any, the others have access to.
 2 Q What's -- what's -- what's the name of
 3 the folder?
 4 A Again, I just don't remember.
 5 I'm actually speculating that it's
 6 even in there somewhere, but I suspect it is.
 7 MR. SCHMIDT: Do you want the name of
 8 the folder or the shared drive?
 9 BY MR. WASSERMAN:
 10 Q I'm sorry. The name of the drive, the
 11 shared drive.
 12 A Is SugarSync.
 13 Q I'm sorry?
 14 A SugarSync. That is the software
 15 company that operates the -- the shared drive
 16 cloud backup service.
 17 Q So is this an icon on your desktop
 18 that you just double click and it opens up the
 19 shared drive?
 20 A Yes. Actually, the -- file folders
 21 are shared -- yeah.
 22 All I know is I go to my documents,
 23 and it's in there. Certain folders are
 24 shared --
 25 Q What's in there?

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1 A Folders that I need to look at, some
 2 of which are shared, some of which are unique to
 3 my computer.
 4 Q What are those folders?
 5 A I don't recall the specifics.
 6 Q This is -- this is your office.
 7 This -- you go in there every day, right?
 8 A That's correct.
 9 Q And you sit at this computer every
 10 day, right?
 11 A Yes. I mean, sure. Every day. All
 12 right. Go ahead.
 13 Q When you work -- you work remotely
 14 sometimes, right?
 15 A Yes.
 16 Q Do you have access to the same folders
 17 when you work remotely?
 18 A Yes.
 19 Q So you do this almost every day?
 20 A Yes.
 21 Q You access these -- this folder
 22 almost -- this shared drive almost every day,
 23 right?
 24 A Right.
 25 Q What folders are in that shared drive?

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1 A A lot of folders. I honestly don't
 2 remember. I mean --
 3 Q You don't remember any of them?
 4 A What's that?
 5 Q You don't remember any of them?
 6 A There's a folder called "Catalyst" in
 7 there, yes.
 8 Q Okay. That is a good start.
 9 A Okay.
 10 Q There is a folder called "Catalyst"?
 11 A Yes.
 12 Q Do you remember the names of any other
 13 folders?
 14 A I have a folder called "personal
 15 documents." I have a folder for each of my
 16 children.
 17 Q Okay. So is everything Catalyst
 18 related in the Catalyst folder?
 19 A To the best of my knowledge, yes.
 20 Q If you double click on that Catalyst
 21 folder, what do you see?
 22 A I see subfolders.
 23 Q What are the subfolders?
 24 A There's at least a folder for
 25 commodity fund and for futures fund, and I'm not

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1 sure what else is in there.
 2 Q Okay. Is everything related to the
 3 futures fund in that futures fund folder?
 4 A I'm not sure. I am not a particularly
 5 good recordkeeper or administrator.
 6 Q Okay. If you double click on that
 7 futures fund folder, what's in there?
 8 A I don't -- I don't remember if there's
 9 subfolders or just documents in there.
 10 Q Okay. In that level of the -- of the
 11 drive where there's the futures fund folder and
 12 the commodity fund folder, are there any other
 13 folders that you can recall?
 14 A There are other folders, but I don't
 15 remember how they're -- what they are named.
 16 MR. SCHMIDT: Can we get a directory
 17 of the folders that are in there?
 18 MR. ZILIAK: Sure.
 19 MR. SCHMIDT: Obviously, we are not
 20 interested in your personal folders, but to the
 21 extent -- we'd like to know what's in the
 22 Catalyst folder, the commodity subfolder and the
 23 futures fund subfolder.
 24 If there are other subfolders
 25 elsewhere on the shared drive that relate to

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1 Catalyst, the futures fund, or the commodity
 2 fund, we'd like to know --
 3 MR. ZILIAK: Um-hum.
 4 MR. SCHMIDT: -- what's in those
 5 folders as well please.
 6 MR. ZILIAK: Makes sense.
 7 MR. SCHMIDT: Okay. Thank you.
 8 BY MR. WASSERMAN:
 9 Q One -- I'm sorry. One further
 10 follow-up question.
 11 Has a preservation request in
 12 connection with this investigation been relayed
 13 to you?
 14 A Yes.
 15 Q When was that relayed to you?
 16 A I don't recall. Early on.
 17 Q About a year ago, to the best of your
 18 recollection?
 19 A I think so. Sure. I think so.
 20 BY MR. SCHMIDT:
 21 Q Before you got that request, did you
 22 delete any documents regarding Catalyst, the
 23 futures fund, or the commodity fund
 24 intentionally?
 25 A I delete documents from time to time.

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1 I don't recall specifically deleting
 2 or not deleting, but that's a routine part of
 3 what I do prior to receiving that order.
 4 Q Did you ever do any deletion that was
 5 not routine prior to getting the preservation
 6 order?
 7 A I don't recall doing that, no.
 8 Q You said that currently nobody at
 9 Catalyst New York or nobody at Catalyst has
 10 access to the shared drive. So I just need to
 11 follow up.
 12 Did they at any time -- people in New
 13 York or associated with Catalyst -- have access
 14 to your shared drive?
 15 A No, I don't -- not that I recall, no.
 16 Q Okay. Who would know that for sure?
 17 A I don't know if anyone would know for
 18 sure.
 19 I'm the one that controls access, and
 20 I simply don't recall if, for any reason, I may
 21 have given someone access temporarily or --
 22 Q Not Mr. Glass? Not Mr. Szilagyi?
 23 A Again, I don't recall if, for some
 24 reason, to transmit a document more efficiently
 25 that I gave them access for a short time.

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1 I don't believe so. But, again, my
 2 memory is not complete on that.
 3 Q So for purposes of this -- I'm sorry.
 4 It's called SugarSync?
 5 A Yes.
 6 Q Is that one word?
 7 A Yes.
 8 Q Just how it sounds, S-y-n-c?
 9 A Yes.
 10 Q Okay. Are you the administrator of
 11 the shared drive?
 12 A I don't know that I have a title
 13 connected with the shared drive. I bought the
 14 software, and I use it.
 15 Q Well, generally, with a software
 16 program, the person that controls access is
 17 deemed the administrator.
 18 I'm not looking for a formal title,
 19 but like in the terms of software programs,
 20 that's what it's called.
 21 A Okay.
 22 Q Do you know if you have administrator
 23 privileges for that program?
 24 A For certain folders that I control.
 25 I -- I'm not certain if any of the others in the

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1 group of people we talked about have downloaded
 2 their own copy of SugarSync and thereby control
 3 files.
 4 Q Okay. All right. I'm going to show
 5 you what's been marked as Exhibit 143.
 6 (SEC Exhibit No. 143 was
 7 marked for identification.)
 8 BY MR. SCHMIDT:
 9 Q For the record, this is an e-mail
 10 dated November 6th, 2014. Could you take a
 11 minute, let me know if you recognize this
 12 document.
 13 A It looks like an e-mail from me to --
 14 I'm not sure who, but it's an e-mail from me.
 15 Q Okay. So, for the record, it's --
 16 it's an e-mail address hoopss4@aol.com, right?
 17 A Yes.
 18 Q And looking through the e-mails, it
 19 look like that person might have the first name
 20 Jeff, right?
 21 A Yes.
 22 Q You can't imagine who Jeff might have
 23 been in November of 2014 that you were
 24 e-mailing?
 25 Oh, it's Jeff Berkowitz. Does that

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1 ring a bell?
 2 A Yeah. I still don't remember who he
 3 is, but that name somehow sounds familiar.
 4 Q Okay. It looks to me like this e-mail
 5 is after your conversation with Mr. Szilagyi
 6 that was referenced in the e-mail seven days
 7 earlier. Is that fair?
 8 A Sure.
 9 Q Okay. If you read through this, does
 10 this refresh your recollection or give you any
 11 insight into what was discussed with Mr.
 12 Szilagyi regarding capacity issues and any
 13 outcomes that may have come from those
 14 discussions?
 15 A No. It looks like I talked about soft
 16 close at a billion, which I didn't recall
 17 earlier, but clearly I wrote it here. So that
 18 must be our discussion.
 19 Q So in the fall of 2014, the capacity
 20 discussions, the status was you were discussing
 21 with Mr. Szilagyi a soft close at a billion
 22 dollars?
 23 A Yes.
 24 Q Okay. And do you have any doubt that,
 25 when you say, "My discussions with Catalyst,"

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1 refers to a discussion with Mr. Szilagyi?
 2 A No. That's what it would refer to.
 3 Q Okay. So -- and it also looks like if
 4 we -- if we go down to your e-mail of July 30th,
 5 which is at the bottom of the first page, it
 6 looks like, at that point, we could guess AUM is
 7 not up to half a billion yet, right?
 8 A Correct.
 9 Q Okay. So at some point in the fall of
 10 2014, you're some point between half a billion
 11 and a billion dollars? Is that a fair
 12 assumption?
 13 A Yes.
 14 Q Okay. Was there a soft close at a
 15 billion dollars?
 16 A I recall that Catalyst attempted a
 17 soft close at some point in time, but I honestly
 18 don't remember when or what assets that was
 19 done.
 20 Q Okay. So we'll -- we'll get to that.
 21 I think there was a soft close
 22 attempted in the fall of 2015. Does that sound
 23 right?
 24 A I don't recall.
 25 Q Okay. All right. Do you remember any

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1 attempt at soft close in 2014?

2 A Again, I -- I don't believe it was
3 that early when Catalyst did a soft close, but I
4 don't recall the exact date.

5 Q Okay.

6 (SEC Exhibit No. 93 was
7 marked for identification.)

8 BY MR. SCHMIDT:

9 Q I show you what's been marked as SEC
10 Exhibit 93.

11 So, for the record, this is an e-mail
12 dated October 9, 2015. The subject is Catalyst
13 funds to soft close -- this is in all caps --
14 HFXAX, comma, launches additional alternative
15 mutual funds Catalyst -- I'm sorry. Then it
16 just repeats. So that was the end. "Mutual
17 funds." Did I read that correctly?

18 A Yes.

19 Q Okay. So now we're a year later,
20 right, after your first -- or at least the
21 October 2014 soft close discussions with Mr.
22 Szilagyi?

23 A Yes.

24 Q Okay. And do you recognize this
25 announcement?

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1 A I don't. I am not sure that I was
2 copied on this. I'm not generally.

3 Q Do you know which alternative mutual
4 fund was launched in the fall of 2015?

5 A We launched the commodity fund in the
6 fall of 2015. I'm not sure if that's the one
7 they are referring to.

8 Q Okay. Well, let's talk about that.

9 Was any part of the decision to launch
10 the commodity fund based on capacity concerns of
11 the futures fund?

12 A My recollection of discussions with --
13 with Mr. Szilagyi was that he felt there was an
14 opportunity to apply the strategy to a new fund
15 in different markets.

16 He thought that should, at some point
17 we decide to close the futures fund, then this
18 would be another -- this would be an alternative
19 for investors who were interested in the
20 strategy.

21 Q Okay. So -- I'm sorry. I'm going to
22 have to ask the question again.

23 A Sure.

24 Q Was part of the decision to launch the
25 commodity fund due to capacity concerns for the

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1 futures fund?

2 A We did discuss that, yes. I think it
3 was.

4 Q Okay. So when you say, "We," it's Ed
5 Walczak and Mr. Szilagyi?

6 A That's correct.

7 Q Anybody else?

8 A I don't remember if anyone else is in
9 on -- we had more than one conversation. So I
10 don't recall if others were involved in the
11 conversation.

12 I do recall that Mr. Szilagyi and I
13 were involved.

14 Q You guys were definitely involved.
15 Other people may have been?

16 A Correct.

17 Q Okay. And did -- you do remember when
18 Catalyst attempted to soft close the futures
19 fund?

20 A I remember that happening, yes.

21 Q Right. You remember -- you may not
22 remember the exact date, but you remember that
23 incident?

24 A Yes.

25 Q Okay. Were the discussions with Mr.

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1 Szilagyi about capacity and the decision to
2 launch the futures fund -- sorry -- the
3 commodity fund before, during, or after the soft
4 close that was attempted for the futures fund?

5 A I honestly don't remember that,
6 remember whether it was before or after.

7 Q Okay. So as of -- does this refresh
8 your recollection that the attempted soft close
9 was in the fall of 2015?

10 A According to this document, yes, sure.

11 Q Do you have any reason to believe that
12 that's incorrect?

13 A No.

14 Q Okay. So fall of 2015, capacity is
15 still a concern, correct?

16 A We -- we continued to look forward to
17 ensure that we were out in front of any capacity
18 issues that might affect the strategy, yes.

19 Q Okay. But it has progressed from the
20 point of just discussing it to actually deciding
21 to and implementing a soft close by the fall of
22 2015?

23 A Yes.

24 Q Okay.

25 A That's when the soft close was

<p style="text-align: right;">Page 374</p> <p>1 attempted.</p> <p>2 Q So were you part of the decision to</p> <p>3 soft close the fund in the fall of 2015?</p> <p>4 A I was made aware of it.</p> <p>5 I don't know that I had a lot of input</p> <p>6 into the decision, other than I continued to</p> <p>7 provide my point of view on capacity of the</p> <p>8 fund.</p> <p>9 Q Were you made aware of it after the</p> <p>10 fact or before it was going to happen?</p> <p>11 A I think before.</p> <p>12 Q Did you say: This is a bad idea; we</p> <p>13 shouldn't do it?</p> <p>14 A No.</p> <p>15 Q Did you agree with the decision?</p> <p>16 A Yes.</p> <p>17 Q Okay.</p> <p>18 BY MR. BENSON:</p> <p>19 Q You said that the soft close was</p> <p>20 attempted. That was your word, "attempted"?</p> <p>21 A Yes.</p> <p>22 Q In October 2015.</p> <p>23 Why did you use the word "attempted"</p> <p>24 as compared to "implemented" or "communicated"?</p> <p>25 A Well, because my understanding after</p>	<p style="text-align: right;">Page 376</p> <p>1 to understand what tools were available for us</p> <p>2 to reduce inflows should that become necessary.</p> <p>3 Q Well, okay. You're not engaging in a</p> <p>4 theoretical exercise at this point, right?</p> <p>5 You've made a decision to implement a</p> <p>6 soft close to reduce inflows to the fund.</p> <p>7 You're not just running hypotheticals</p> <p>8 about whether this could happen, correct?</p> <p>9 A Well, what my response is meant to</p> <p>10 indicate is that we did not have an idea about</p> <p>11 how this soft close would impact flows.</p> <p>12 We expected that they would be</p> <p>13 reduced, certainly.</p> <p>14 We did not have any idea about whether</p> <p>15 they would be reduced dramatically, slightly,</p> <p>16 whether we'd see negative flows.</p> <p>17 So the point of this exercise was to</p> <p>18 identify exactly what this tool would -- would</p> <p>19 do for us.</p> <p>20 BY MR. WASSERMAN: I'm sorry. Is it</p> <p>21 your testimony that it wasn't actually your</p> <p>22 objective to reduce inflows but rather to see</p> <p>23 whether a soft close would -- would reduce</p> <p>24 inflows?</p> <p>25 THE WITNESS: It would both -- it was</p>
<p style="text-align: right;">Page 375</p> <p>1 the fact -- and, again, I'm very much unfamiliar</p> <p>2 with mutual fund distribution and platforms and</p> <p>3 how these things work.</p> <p>4 So I understand at a high level the</p> <p>5 concept of a soft close.</p> <p>6 I was aware that a soft close was</p> <p>7 going to go into effect.</p> <p>8 I later became aware that there were</p> <p>9 some issues with implementing the soft close.</p> <p>10 Q Okay. I was just trying to</p> <p>11 understand --</p> <p>12 A Sure.</p> <p>13 Q -- if you purposely used that word.</p> <p>14 Thank you.</p> <p>15 BY MR. SCHMIDT:</p> <p>16 Q Why did you agree with the decision to</p> <p>17 soft close the fund in the fall of 2015?</p> <p>18 A Because at that time I felt like it</p> <p>19 was prudent to understand whether a soft close</p> <p>20 would be effective in allowing us to control</p> <p>21 inflows -- inflows into the fund.</p> <p>22 Q And the reason you wanted to do that</p> <p>23 was because you wanted to reduce inflows to the</p> <p>24 fund?</p> <p>25 A I wanted -- for me personally I wanted</p>	<p style="text-align: right;">Page 377</p> <p>1 both.</p> <p>2 MR. WASSERMAN: Just to be clear, your</p> <p>3 goal was to reduce inflows?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. WASSERMAN: In late -- late 2015?</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. WASSERMAN: Okay.</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q Okay. So let me show you what's been</p> <p>10 marked as Exhibit 94.</p> <p>11 (SEC Exhibit No. 94 was</p> <p>12 marked for identification.)</p> <p>13 BY MR. SCHMIDT:</p> <p>14 Q So, for the record, this is an e-mail</p> <p>15 dated October 20, 2015. Just to be clear,</p> <p>16 you're not copied on this. It is -- relates to</p> <p>17 the soft close that we've been discussing in</p> <p>18 October 2015.</p> <p>19 Let me know when you've had a chance</p> <p>20 to look at it.</p> <p>21 A All right. I've read it.</p> <p>22 Q So Mr. Szilagyi's e-mail, which starts</p> <p>23 at the middle of the first page, if you go to</p> <p>24 the first full paragraph. Not the "see below"</p> <p>25 line but below that.</p>

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1 The first sentence says, "One of the
2 goals of the soft close of the futures fund is
3 to reduce inflows to the fund to maintain the
4 integrity of the investment strategy and
5 performance." Do you see that?
6 A Yes.
7 Q As of the fall of 2015, did you agree
8 with that statement?
9 A Yes, I agree with -- as I testified
10 previously, one of the goals of the soft close
11 was to reduce inflows.
12 Q "In order to maintain the integrity of
13 the investment strategy and performance" is the
14 question.
15 So the full sentence is not "one of
16 the goal is to reduce inflows."
17 The full sentence that I want to know
18 whether you agree or disagree with is the "one
19 of the goals of the soft close of the futures
20 fund is to reduce inflows to the fund to
21 maintain the integrity of the investment
22 strategy and performance."
23 So as of the time of the soft close,
24 did you agree or disagree with that statement?
25 A Yes. I agree with the statement that,

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1 at some point in the future, there might be a
2 level of assets that would impact that
3 performance so, at this time, we would like to
4 reduce inflows to avoid reaching that level.
5 Q The concern was at some point, without
6 reducing inflows, the size would impact --
7 negatively impact the investment strategy and
8 performance, correct?
9 A That was a concern, yes.
10 Q Okay. And I think before you said, in
11 the context of your 2014 discussion, your
12 concern about how it would impact the strategy
13 and performance is tied to the FCM capacity
14 issue?
15 A That's correct.
16 Q Okay. And all I'm wanting to know is,
17 looking forward a year now, right, from 2014 to
18 the fall of 2015, are there any additional
19 reasons that you're concerned at this point, or
20 are you still concerned about the FCM issue?
21 A I mentioned the -- the different
22 metrics we use to look at capacity issues. So
23 we were always monitoring -- I was certainly
24 always monitoring execution quality, volume
25 numbers, FCM capacity.

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1 So all of those were -- were things
2 that we monitored carefully.
3 Q Okay. So FCM capacity relates to the
4 amount of margins that the FCMs give you?
5 A Yes.
6 Q Okay. And what are your concerns with
7 volume, separate from any concerns related to
8 the FCMs?
9 A They are the concerns that I addressed
10 in Exhibit 143, execution issues.
11 Q Okay. Explain to me how -- when you
12 say, "volume," you're talking about the futures
13 fund percentage of the pit value?
14 A That's what we monitored, yes, to try
15 and understand whether or not volume was
16 impacting the quality of our execution.
17 Q Okay. So explain to me why -- I
18 assume an increase volume may have an negative
19 impact on execution quality. Is that what
20 you're trying to look for?
21 A That's what we were trying to look
22 for, yes.
23 Q Okay. So explain to me how that would
24 happen or why that would happen.
25 A I'm not really certain other than that

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1 is something we were concerned about.
2 It just seemed as though a larger
3 volume -- you know, we were concerned that --
4 that large size may or may not affect pricing.
5 So we monitored it.
6 Q But, like, why? In your mind -- just
7 sitting there, you're like, okay, we have this
8 issue with capacity. We are growing very fast.
9 There's some things we should look at.
10 A Right.
11 Q One of them is the amount of margin
12 that we are getting from FCM and whether that's
13 ever going to run out at some point --
14 A Yes.
15 Q -- right? That makes total sense?
16 A Yes.
17 Q So another one is whether our size is
18 going to affect our execution quality and the
19 prices we receive?
20 A Yes.
21 Q Okay. Why does that occur to you as a
22 potential problem?
23 A It -- it -- again, I may be incorrect.
24 It just seems as though perhaps counterparties
25 would require a different pricing level for --

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1 for size. That's not unusual in -- in any
 2 marketplace I can think of.
 3 Volume affects price. Sometimes it
 4 improves it. Sometimes it works the other way.
 5 Q You weren't concerned with an
 6 improvement to price, right?
 7 A Well, I certainly wasn't concerned
 8 that that was going to happen, in other words,
 9 as a risk, no.
 10 Q Okay. The risk was that your size
 11 would cause counterparties to raise prices on
 12 you and, given the volume of contracts you
 13 needed to execute, you had nowhere else to go
 14 and had to pay the price? That's the risk,
 15 right?
 16 A Well, that's the risk in -- I wouldn't
 17 characterize it as "nowhere else to go."
 18 In other words, my concern was
 19 entering trades, whether or not I would over
 20 time get -- get fair execution prices.
 21 Q Okay. If your counterparties raise
 22 their prices, where else would you go?
 23 A I simply wouldn't execute. And that
 24 to me was the -- you know, the thing I was
 25 monitoring, what --

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1 Q That's also a risk to the strategy
 2 too.
 3 And --
 4 A Sure.
 5 Q -- I apologize for talking over you.
 6 That's also a risk to the strategy
 7 because then, if you wanted to execute but you
 8 don't because the prices have risen to an
 9 unacceptable level, that's impacts how you can
 10 execute the strategy and the fund's performance?
 11 A Sure.
 12 Q Okay. And that was a concern back in
 13 October of 2015?
 14 A No. That was something we were
 15 monitoring.
 16 In fact, that was not a concern back
 17 there -- back then.
 18 In other words, it was not a point at
 19 which I said, wow, we are getting unfair prices;
 20 we have to do something.
 21 Q Okay. It was not actually occurring?
 22 A Correct.
 23 Q But it was a potential risk that you
 24 were keeping an eye on to see whether it would
 25 start occurring?

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1 A Yes.
 2 Q Okay. Fair enough.
 3 There was a third reason you gave me.
 4 You said FCM. You said volume. And I think you
 5 said execution issues. Is that --
 6 A That's --
 7 Q -- any different than the volume?
 8 A -- no different than the volume.
 9 Q Okay. Is that a full statement of the
 10 reasons why you were concerned about capacity at
 11 the time of the soft close in October of 2015?
 12 A We had some -- and I -- I can't list
 13 them now, but we -- we had included in our deck
 14 some -- a few other more subjective or difficult
 15 to quantify concerns about -- about capacity.
 16 Q What deck? Are you talking about the
 17 capacity analysis?
 18 A Yes.
 19 Q Okay. Do you know whether or not that
 20 deck existed as of October 2015?
 21 A I don't.
 22 Q Okay. Well, I'll tell you we are
 23 going to get to it.
 24 So if something -- if you read that
 25 and it says, yeah, that was also a concern back

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1 in 2015, let us know.
 2 A Okay.
 3 Q Okay.
 4 BY MR. BENSON:
 5 Q Before we move, I just want to make
 6 sure, just to get back to this execution issue,
 7 there was never a concern that the S&P contracts
 8 were going to be illiquid assets, right?
 9 It was just going to be more difficult
 10 or more expensive to unload them, if you needed
 11 to?
 12 A Correct, and our concern really was on
 13 the -- on the -- you know, just in normal
 14 conducting our business, not unloading actually
 15 on the entry side.
 16 Q To putting on the trade?
 17 A Exactly, could we put these on.
 18 And you're correct in saying the S&P
 19 contract is -- and maybe it is not absolutely
 20 true if I say it's the most liquid in the world,
 21 but it's one of the most liquid equity contracts
 22 in the world.
 23 So that gave us a lot of confidence
 24 that we would have that liquidity going forward.
 25 And, again, as I monitored the

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1 situation over time, I did not observe any
2 issues.

3 Q So just to bring that full circle,
4 your concerns related to capacity, they related
5 to FCM capacity, margin, and its volume
6 capacity, slash, execution, but never to the
7 liquidity of the -- of the actual futures
8 contract, right?

9 A Right.

10 MR. BENSON: Thank you.

11 MR. WASSERMAN: Just to be --

12 MR. SCHMIDT: Okay.

13 MR. WASSERMAN: No. Go ahead.

14 BY MR. SCHMIDT:

15 Q The concerns that you had at the time,
16 the time of the October 2015 soft close
17 attempt --

18 A Yes.

19 Q -- did you keep those concerns to
20 yourself, or did you discuss them with Mr.
21 Szilagyi?

22 A As I testified previously, we had not
23 frequent but somewhat regular discussions about
24 capacity.

25 It really is a way -- again, this was

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1 because I wanted to be forward looking.

2 As we got larger and larger, I
3 suspected that some of these things might become
4 issues and wanted simply to be forward looking.

5 So I had discussions with Mr. Szilagyi
6 from time to time. Most of the time to say:
7 We're keeping an eye on it. We are still fine,
8 but we have to keep an eye on it. So at some
9 point, if I tell you we are not fine, then we
10 need to be ready to do something.

11 And that's what spurred the soft
12 close.

13 Q Okay. The only -- the only thing I'm
14 trying to get to is that, in October of 2014,
15 you had a discussion with him, and you were very
16 frank and open with your concerns about size and
17 how that might be a potential risk going
18 forward, and you wanted to be forward looking;
19 is that fair?

20 A Yes, that's fair.

21 Q When we got to October 2015, you gave
22 me another reason -- not just the FCM reason
23 that existed in 2014, but you also said pit
24 volume and potential risk to execution quality.

25 And I just want to make sure that, as

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1 we are going forward through these capacity
2 discussions, that you're a still being open and
3 frank with Mr. Szilagyi as to your potential
4 concerns and there's nothing that is a concern
5 to you that you're keeping from him.

6 A That's correct.

7 Q Okay. All right. So to the extent
8 you've discussed what you view to be potential
9 risk to the strategy, to the fund's performance
10 related to capacity, you're relaying those to
11 Mr. Szilagyi?

12 A That's correct.

13 Q Okay. Thank you.

14 Was the soft close in October of 2015
15 of the futures fund successful?

16 A No.

17 Q Why not?

18 A Again, I -- I -- I don't know the
19 details other than how it's been explained to
20 me, and I'm not certain I fully understand.

21 Q Okay. Just to be clear, I want to
22 know what your understanding is.

23 A All right.

24 Q Even if it might be imperfect.

25 What was told to you as -- and by whom

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1 as to the reason the soft close was
2 unsuccessful?

3 A I don't know because I actually don't
4 recall having a direct conversation with Mr.
5 Szilagyi about why it wasn't successful.

6 But I do recall in conversations with
7 others, for sure, that -- understanding that
8 certain distribution platforms weren't able to
9 mechanically accomplish the soft close.

10 In other words, it wasn't possible to
11 restrict orders such that they were only from
12 existing shareholders.

13 Q Is -- anything else about how it was
14 explained to you?

15 Is that the complete explanation you
16 got or the understanding that you have?

17 A That's -- that's my basic
18 understanding.

19 Q Okay. Have you ever heard of any
20 other fund implementing a soft close?

21 A I don't recall a specific fund. But,
22 as I testified earlier, I'm familiar with the
23 concept.

24 Q Okay. So other funds in the world
25 have figured out how to do this, right?

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1 A Again, I don't know that for sure.
 2 Q I'm just trying to understand does it
 3 make sense to you that it is mechanically
 4 impossible to execute a soft close? Does that
 5 explanation make sense to you?
 6 A Absolutely.
 7 Q It does?
 8 A Yes, it does.
 9 Q Okay. Why?
 10 A I have an extensive experience in
 11 operations management, systems, and processes.
 12 And it's not surprising to me at all on that
 13 basis that something which sounds simple at the
 14 top line in a -- in a multi-platform, whatever
 15 that means, distribution network, that it would
 16 not be possible to accomplish that. That's not
 17 surprising.
 18 MR. SCHMIDT: Okay.
 19 BY MR. BENSON:
 20 Q In your experience of operations
 21 management, if you were aware of another market
 22 participant having successfully achieved the
 23 goal that you're trying to work on, would it be
 24 unusual for you to pick up the phone and say:
 25 Hey, I saw that you've successfully did X. We'd

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1 like to brainstorm with you about how you did
 2 that because we are considering how to do the
 3 same?
 4 Would that be out of bounds? Anything
 5 to prohibited you from doing that?
 6 A Nothing to prohibit it. That -- in my
 7 view, sure, that would be a great -- a good
 8 business practice.
 9 Q So, for instance, if Fidelity fund or
 10 Vanguard or kind of one of the behemoth mutual
 11 fund complexes out there had successfully
 12 completed a soft close on a large, you know,
 13 scale, there's nothing that would have
 14 prohibited anyone from Catalyst from reaching
 15 out to them and say: Hey, I just want to
 16 discuss with you how you have done with before?
 17 A Nothing I'm aware of that would
 18 prohibit that kind of conversation.
 19 Q Did any -- did you ever present any
 20 conversations where someone was like: Hey, we
 21 should identify another fund that's done a soft
 22 close and just make sure that we're dotting our
 23 Is and crossing our Ts?
 24 A I -- I don't remember any discussion
 25 like that.

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1 Again, I'm very far removed from this
 2 kind of activity.
 3 MR. BENSON: Thank you.
 4 BY MR. SCHMIDT:
 5 Q So the soft close was not successful,
 6 correct?
 7 A Correct.
 8 Q Did the capacity concerns go away?
 9 A No.
 10 Q Okay. Did the potential risks that
 11 you've identified, which are related to these
 12 FCM margin and the pit volume related to
 13 execution quality -- did those disappear?
 14 A The potential risk did not, no.
 15 Q Okay. So I'm going to show you what's
 16 been marked as Exhibit 144.
 17 (SEC Exhibit No. 144 was
 18 marked for identification.)
 19 BY MR. SCHMIDT:
 20 Q For the record, this an e-mail, March
 21 16th, 2016, which appears to be from Mr. Walczak
 22 to Kimberly Rios.
 23 The subject is in response to an
 24 e-mail Ms. Rios sent, the title of which is
 25 "Soft Close, Items to Ponder."

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1 Let me know when you have had a chance
 2 to look at that.
 3 A Okay.
 4 Q Okay. This is five months after the
 5 attempted soft close in October 2015, correct?
 6 A Correct.
 7 Q The issue of a soft close is still on
 8 the table, right?
 9 A I'm not really sure what that means.
 10 Q Okay. So your -- the soft close was
 11 unsuccessful. We've established that, right?
 12 A Yes.
 13 Q But Mr. Szilagyi -- so Catalyst and
 14 the futures fund are still discussing whether to
 15 do a soft close; I guess to attempt another one;
 16 is that correct?
 17 A You know, I don't remember -- I don't
 18 remember that -- that we were discussing a
 19 second one. I don't remember a second soft
 20 close being contemplated.
 21 Q Okay. So when Ms. Rios writes, "He,"
 22 meaning Jerry Szilagyi, "discussed a soft close
 23 with the latest stats during a late February
 24 2016 phone call," you don't think that is
 25 relating to a second possible soft close?

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1 A I don't know. I wasn't on the call.
 2 MR. BENSON: Right. But you received
 3 Exhibit 144. Do you recall ever talking to
 4 anyone about a soft close in February 2016?
 5 THE WITNESS: Again, that's my
 6 testimony. I honestly don't remember a second
 7 attempt at a soft close. I don't know whether
 8 that was -- I don't remember discussing a second
 9 attempt.
 10 I didn't remember that there was any
 11 resolution to the reasons for the failure of the
 12 first one.
 13 BY MR. SCHMIDT:
 14 Q Okay. So fair to say this doesn't
 15 refresh your recollection at all as to whether
 16 you had any discussions about a potential soft
 17 close in the first quarter of 2016?
 18 A No.
 19 Q Okay. There's a rather dramatic
 20 statement in here that somebody at ML, perhaps
 21 Merrill Lynch, told Mr. Szilagyi the fund is
 22 going to, quote, blow up. This rattled him a
 23 bit.
 24 A Yes.
 25 Q Do you see that?

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1 A I do.
 2 Q Do you remember any discussion about
 3 whether the fund might blow up?
 4 A I do remember that because it's a --
 5 it's a phrase that can be misinterpreted, and I
 6 do remember talking to Ms. Rios about that.
 7 Q What do you remember?
 8 A What I remember is that Jerry had been
 9 told that the fund assets might accelerate in
 10 growth, meaning blow up in terms of sales at
 11 Merrill Lynch and other places.
 12 Q And that rattled him quite a bit?
 13 A Apparently -- that was Ms. Rios's
 14 interpretation, apparently, from this e-mail.
 15 Q And that would make sense if capacity
 16 is an ongoing concern, right?
 17 A Yes.
 18 Q Okay. So did you have any discussions
 19 with Mr. Szilagyi about his concern that the
 20 assets under management of the futures fund
 21 might blow up and accelerate too quickly?
 22 A I don't remember any out of the
 23 ordinary.
 24 As I've testified, we had periodic
 25 discussions about capacity.

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1 I don't remember a specific
 2 conversation related to the fund blowing up at
 3 Merrill Lynch.
 4 Q Okay.
 5 BY MR. WASSERMAN: I have a few
 6 questions on this.
 7 MR. SCHMIDT: Yeah.
 8 BY MR. WASSERMAN:
 9 Q First, how could somebody misinterpret
 10 the phrase "blow up"?
 11 A Well, it -- I mean, I'll give you my
 12 personal opinion.
 13 When I see something like that, it
 14 suggests that something about the fund is going
 15 to end its life.
 16 Q In other words, somebody could
 17 interpret the phrase to mean the fund is going
 18 to collapse?
 19 A In some way, yes.
 20 Q And you're certain that -- but when
 21 Ms. Rios wrote "blow up," that she meant
 22 acceleration in the increase in AUM and not
 23 collapse?
 24 A I -- I am not certain of anything on
 25 this e-mail. I'm giving you my best

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1 recollection.
 2 Q Okay. I want to draw your attention
 3 to -- to one other part of the e-mail. It's the
 4 second -- quote, question to ponder, end quote,
 5 where Ms. Rios writes, "Have you felt a sweet
 6 spot when trading through all the different AUM
 7 levels where everything went fairly smooth such
 8 as at 2B," which I assume means \$2 billion.
 9 A (Nodding head.)
 10 Q Parenthesis, November. I assume she's
 11 referring to November 2015?
 12 A I'm sorry. I lost you now.
 13 Which line are you referring to when
 14 you talk about "November"?
 15 Q I'm in the second dash under
 16 "questions to ponder."
 17 A Okay. Okay. I see it. And -- so I'm
 18 sorry. What was your question?
 19 Q November -- N-o-v refers to November
 20 2015? Is that your understanding?
 21 A I don't know which November.
 22 Apparently that was a November when the fund was
 23 at \$2 billion.
 24 So, again, I don't have asset levels
 25 in my head about when the fund was a

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1 particular --

2 Q Well, we discussed before about how in
3 2014 -- May 2014 the fund was under 500 million,
4 right?

5 A Yes.

6 Q So she must be talking about November
7 2015, correct?

8 A I mean -- oh, sure. Actually -- sure,
9 now that I -- I recall now the date of the
10 e-mail to be March of 2016. So certainly that's
11 likely, yes.

12 Q Okay. So she says, "Have you felt a
13 sweet spot when trading through all the
14 different AUM levels where everything went
15 fairly smooth, such as at 2 billion in November
16 was it comfortable without any constraints?"

17 In March of 2016 -- this is my
18 question now. I'm not reading from the
19 document.

20 A Okay.

21 Q In March of 2016, the execution issues
22 had actually manifested themselves, correct?

23 A Not that I recall, no.

24 Q Well, so why would she say -- why
25 would she suggest that there were some times

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1 prior to that when execution -- I'm sorry --
2 when trading had been smooth and times when
3 trading hadn't been smooth?

4 A I don't know.

5 My -- my response to her and -- in any
6 of these types of discussions were at any
7 moment, if I felt like execution was constrained
8 by capacity, I would raise that issue and --

9 Q Well, it's not -- it's not binary,
10 right? It's not like all of a sudden you can't
11 trade, right?

12 A Correct.

13 Q As the fund increases in size, the
14 traders in the pit become more and more aware of
15 your positions, correct?

16 A I don't know if their awareness of
17 my -- I don't know how their awareness of my
18 positions is or is not determined, to be honest.

19 Q Jeremy has communicated to you that
20 the traders in the pit know your -- what your
21 positions are, right?

22 A From time to time, he said that, yes.

23 Q Do you --

24 MR. SCHMIDT: Do you have --

25 MR. WASSERMAN: Sorry. Go ahead.

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1 MR. SCHMIDT: Do you have any reason
2 to believe that Mr. O'Keefe wouldn't be telling
3 you the truth when he said that?

4 THE WITNESS: No.

5 MR. SCHMIDT: Okay.

6 BY MR. WASSERMAN:

7 Q And as we were discussing before, the
8 concern specifically is that, when a trader
9 knows -- a trader in the pit knows that you want
10 to get into or get out of a position, in a large
11 volume, that he make -- may make you pay a
12 higher price for that, correct?

13 A I don't have any way of knowing that
14 other than observation.

15 Q That's the concern, as you
16 articulated --

17 A That's the concern. Absolutely.

18 Q And that concern --

19 A Let -- let me amend my answer, that
20 the concern is not so much around the trader's
21 knowledge of who the counterparty is but more
22 about simply the size of the trade.

23 And, in fact, that's how we managed
24 trades as -- as we grew in size, was to cut our
25 trade size down.

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1 Q Right. But it's related to the -- the
2 knowledge of your positions because if, as
3 expiry approaches, a trader in a pit knows that
4 you have a large position you need to get out
5 of, that's significant, correct?

6 A It could be.

7 Q Okay. And that's part of the concern
8 that you have about execution quality, correct?

9 A At this -- at this moment in time,
10 certainly I -- my main concern was on the entry
11 side: Could I consistently enter trades at a
12 fair price?

13 Q And by March of 2015 -- I'm sorry.

14 By March of 2016, there had been times
15 when that entry had been smooth, and there had
16 been times when that entry hadn't been smooth,
17 right?

18 A That is also true for time frames
19 prior to September of 2013 and post-September of
20 2013 and throughout 2014. That statement is
21 correct.

22 Q Okay. So the answer to my question is
23 yes, that prior to March of 2016, there had been
24 times when entry into a trade was smooth and
25 times when entry into a trade wasn't smooth?

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1 A That is always correct, independent of
2 size.

3 Q And, more specifically, there were
4 times when you tried to enter into a trade and
5 you got exactly the price that you wanted and
6 other times when you tried to enter into a trade
7 and you didn't get exactly the price that you
8 wanted, right?

9 A Correct.

10 Q And as the fund got bigger and bigger,
11 from 2014 to 2016 to early 2016, the frequency
12 with which you didn't get the price that you
13 wanted increased; is that --

14 A I did not notice that, no.

15 Q You didn't notice that at all?

16 A I did not.

17 Q So why does Ms. Rios say here -- or
18 I'm sorry.

19 Why does Ms. Rios suggest here that
20 there are times when trading was smooth and
21 times when trading was not smooth?

22 A Because, as I just testified, that is
23 always the case.

24 Q And -- and the ease with which you're
25 able to execute trades did not change at all as

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1 the fund grew from 500 million to 2 billion?

2 A As you -- as you suggested earlier,
3 it's not binary. It's -- it's subjective.

4 So my judgment was that, over a
5 reasonable time frame, there continued to be
6 times when I got the price I liked and times
7 when I didn't get the price I liked, and I could
8 not discern any pattern to that trade related
9 to -- to size.

10 Q Okay. Was there -- is it your
11 testimony that it did not become increasingly
12 more difficult to get the price you wanted as
13 the fund grew from 500 million to 2 billion?

14 A That is correct.

15 Q That it didn't -- it in no way became
16 increasingly difficult to execute your trades as
17 the fund grew from 500 million to 2 billion?

18 A I did not perceive any -- what's the
19 right word?

20 I didn't perceive any sustained
21 difficulty. I perceived simply the normal back
22 and forth of trading. Some days you get good
23 prices. Some days you don't? That's -- I never
24 perceived anything different.

25 Q And, in your mind, that was the same

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1 in mid 2016 -- I'm sorry.

2 In your mind, that was the same in mid
3 2014 as that was in March of 2016?

4 A Again, my -- it's not a binary
5 situation. So I relied on my judgment --

6 Q I'm not asking you -- I am not -- I'm
7 not asking you whether it was binary or not.

8 I'm asking you whether there was a
9 difference in the ease with which you were able
10 to execute trades between 2014 and March 2016.

11 A And I've responded to that question
12 so -- but I'll respond again by saying I did not
13 notice any systemic, sustained difference in
14 execution.

15 I noticed only the normal fluctuation
16 in execution quality across days, weeks, and
17 months.

18 Q When you want to execute a trade, you
19 call J.J. in the pit?

20 A That's correct.

21 Q And J.J. tells you what kind of prices
22 he can get for that trade, right?

23 A That is correct.

24 Q And sometimes he tells you the price
25 is exactly what you want, and sometimes he tells

Page 405

1 you that the price is not exactly what you want,
2 right?

3 A Correct.

4 Q Okay. In 2016 did he tell you with
5 more frequency than in 2014 that you couldn't
6 get the prices that you want?

7 A Again, I've responded to this, and
8 I'll respond again, that it's not binary. It's
9 not, to my mind, at least, quantifiable, but --
10 so using my judgment in terms of interpreting
11 that frequency, I did not notice a difference.

12 Q There was no difference between 2014
13 and 2016?

14 A Again, it's not quantifiable or
15 binary.

16 I did not notice a significant
17 sustained difference in execution quality.

18 Q I'm not asking you whether you noticed
19 a significant sustained difference.

20 I'm asking you whether you noticed any
21 difference between 2016, when the fund was at \$2
22 billion, and 2014, when it was at 500 million?

23 A And I'm not able to answer about
24 noticing any difference because there are
25 differences every day.

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1 So what I'm telling you is that, over
2 time, we saw good execution, bad execution,
3 everything in between, and in that pattern of
4 good, bad, today, tomorrow, this week, next
5 month, I did not notice a sustained difference
6 in the level of execution quality.

7 Q As the fund grew from 500 million to 2
8 billion, did the execution quality decrease?

9 MR. BYLINA: I think he's answered
10 your question a number of times.

11 BY MR. WASSERMAN:

12 Q I am asking for a yes-or-no answer.

13 A I've described to you it's not a
14 yes-or-no question.

15 Q Did the execution quality stay the
16 same from -- from \$500 million -- from \$500
17 million to \$2 billion?

18 MR. ZILIAK: Sam, with respect, you're
19 familiar with statistics. I mean, there's only
20 a certain power of test to the statistic.

21 There's a certain signal-to-noise ratio. He's
22 described --

23 MR. WASSERMAN: There's a certain
24 what?

25 MR. ZILIAK: Signal-to-noise ratio.

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1 He described variability and execution
2 quality without any change in the input. You're
3 asking if he noticed any change in the input.
4 He's saying there's such variability that he
5 can't discern a difference as a function of that
6 particular input.

7 MR. WASSERMAN: Respectfully, Zach,
8 I'm not getting a direct answer to my question.

9 BY MR. WASSERMAN:

10 Q Is it your testimony that there was no
11 difference between your execution quality in
12 2014 as there was in 2016?

13 A My testimony is that I did not
14 perceive a difference in execution quality,
15 given the fact that there is a difference in
16 execution quality every single day, every single
17 week, every single month. There are always
18 differences.

19 I did not perceive a difference that
20 would cause me to say, on the whole, it is
21 different now. I did not perceive that, no.

22 Q Sitting here in March of -- I'm sorry.

23 When you were receiving this e-mail in
24 March of 2016, was the execution quality you
25 were getting in the pit different than the

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1 execution quality that you were getting in 2014?

2 MR. BYLINA: He's answered the
3 question.

4 THE WITNESS: I have, many times.

5 BY MR. WASSERMAN:

6 Q Was it or wasn't it generally on a
7 day-to-day basis?

8 A On a day-to-day basis, it was always
9 different. I could notice no sustained
10 difference in execution quality over some
11 reasonable period of time.

12 MR. MORAN: Did you believe you could
13 execute your investment strategy as effectively
14 in 2016 as you could in 2014?

15 THE WITNESS: Yes.

16 MR. MORAN: In light of the execution
17 issues we have been discussing?

18 THE WITNESS: In -- in all lights,
19 yes.

20 BY MR. WASSERMAN:

21 Q So why did you need a soft close?

22 A We were forward looking so that, if
23 there came a time when I could not make that
24 statement and could not stand up and say, yes, I
25 believe that I can execute the strategy, if that

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1 time arrived, we wanted to have a tool in place
2 to control inflows, and in advance of that time
3 arising, we thought it was prudent to begin to
4 constrain inflows.

5 Q But there's a sense of urgency to this
6 e-mail here. I mean, you're not talking in
7 hypotheticals anymore. You're actually trying
8 to restrict inflows.

9 Why would you actually be trying to
10 restrict inflows if you're seeing no change in
11 execution?

12 MR. BYLINA: What e-mail are you
13 talking about?

14 MR. WASSERMAN: Exhibit 144.

15 MR. BYLINA: That's Kimberly to Ed.
16 That's not Ed talking about anything. This is
17 an e-mail from Kimberly to Ed, talking about
18 what she spoke to with Jerry.

19 MR. WASSERMAN: I understand that. My
20 question stands.

21 MR. BYLINA: What is your question?

22 MR. WASSERMAN: Can you read back my
23 question?

24 (The reporter read back the record.)

25 MR. BYLINA: He's not trying to do

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1 anything.

2 BY MR. WASSERMAN:

3 Q The question is the question. Why
4 would you -- the question is the question.

5 A So the only thing I can tell you is
6 I'm not certain -- I can't speculate on why Ms.
7 Rios wrote this e-mail the way she did.

8 She tends to have a different
9 communication style than I do. So whether it's
10 urgent or -- a sense of urgency or not urgency,
11 I really can't interpret that from this e-mail.

12 BY MR. SCHMIDT:

13 Q Mr. Walczak, there -- the difference
14 between a soft close and hard close -- right? I
15 think you have talked about this -- is a hard
16 close, you cut off all inflows --

17 A Yes.

18 Q -- into the fund, correct?

19 A Right.

20 Q Soft close, generally speaking, means
21 that current investors can still add money to
22 their investment but new investors can't,
23 correct?

24 A Correct.

25 Q Okay. In October of 2015, Catalyst

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1 did what has been characterized as a modified
2 soft close, right? Not a true soft close?

3 A I have no idea what a modified soft
4 close means.

5 Q Well, what it is means is that, if an
6 investment advisor had a client invested in the
7 futures fund, that client could invest more and
8 any other client of that same investment advisor
9 could invest in the futures fund whether or not
10 they had a preexisting investment. Does that
11 sound familiar as to --

12 A I heard that being discussed.

13 Q Okay. As a modified soft close?

14 A I don't remember what it was called.

15 Q Okay. So this e-mail references
16 that -- Bullet Point 3 under "questions to
17 ponder," what are your overall thoughts on doing
18 a true soft close in the future? I'm guessing
19 your answer to that is, quote, that's up to
20 Jerry, end quote.

21 Okay. So Ms. Rios is talking about a
22 true soft close as opposed to the modified soft
23 close that was a failure. Does that ring any
24 bells to you?

25 A No. I have no idea what she meant by

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1 that statement.

2 As I said, I don't know what
3 "modified" means. I don't know what "true soft
4 close" means. No idea.

5 Q Nobody ever discussed those with you?

6 A I don't remember those terms. I
7 remember, as a part of the discussion, a soft
8 close, a soft close advisor level, a soft
9 close --

10 Q Okay. So that's the same thing.
11 Right? A soft close at the advisor level versus
12 a complete soft close or a true soft close and
13 then a hard close, those are concepts that --

14 A Discussed.

15 Q -- were discussed with you?

16 A That's right.

17 Q Right? I don't care whether they use
18 the words "modified soft close" or "soft close
19 at the advisor level."

20 The concepts were discussed with you?

21 A Yes.

22 Q Okay. And the first concept was
23 attempted and failed, correct?

24 A I don't know what the first concept
25 was. I don't know if it was attempted at the

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1 advisor level, if it was attempted at the
2 shareholder level. Not my area of involvement
3 and not my area of interest. So I don't
4 understand the details of those things.

5 Q You have no knowledge as to whether
6 one or both of those was attempted?

7 A I have no idea.

8 MR. ZILIAK: For the record, we are at
9 10:00 o'clock. I don't know if this is a
10 natural stopping point or --

11 MR. SCHMIDT: Yeah. We are off the
12 record at 10:02.

13 (A brief recess was taken.)

14 BY MR. SCHMIDT:

15 Q Okay. Back on the record at 10:22
16 a.m.

17 Mr. Walczak, have you had any
18 substantive discussions with the staff of the
19 SEC or the CFTC during the break?

20 A No.

21 Q Okay. So before we took a break, you
22 told us about capacity analyses that were done
23 internally at the futures fund that resulted in
24 slide deck presentations, correct?

25 A Correct.

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1 Q More than one, less than ten. You
2 don't remember how many?
3 A Correct.
4 Q Okay. I'm going to show you what's
5 been marked as SEC Exhibit 34.
6 25
7 (SEC Exhibit No. 34 was
8 marked for identification.)
9 BY MR. SCHMIDT:
10 Q So, for the record, this is an e-mail
11 from Ms. Rios to Mr. Szilagyi with you cc'd.
12 It's dated March 15, 2017. And the subject is:
13 Capacity presentations. And it has three PDFs
14 attached dated May 2016, August 2016, and
15 November 2016.
16 Do you see that?
17 A Yes.
18 Q Okay. Do you believe that this was
19 all of the capacity presentations that existed
20 as of March 2017?
21 A I don't know.
22 Q Can you think of any reason why
23 certain capacity presentations would not be
24 provided to Mr. Szilagyi at this time?
25 A I don't know the nature of his request

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1 which she's responding to. So, no, I don't.
2 Q So you have no idea, one way or the
3 other?
4 A Right.
5 Q Okay. In any event, it's fair to say
6 there's at least three of them?
7 A There are three here certainly.
8 Q So all three of the PDFs that were
9 attached to this e-mail are part of this
10 exhibit. Okay?
11 A Okay.
12 Q So if you look on the second page, it
13 says -- it actually appears to be misnamed as
14 the "Commodity Fund Five-Year Plan." I think if
15 you flip through the presentation, do you think
16 that this presentation actually refers to the
17 commodity fund or the futures fund?
18 Actually, if you look at that page you
19 just looked at, it says, "Current FCM status,
20 1.3 billion in AUM"?
21 A Yes.
22 Q Was that ever an accurate description
23 of the commodity fund?
24 A No.
25 Q Was it ever an accurate description of

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1 the futures fund?
2 A Yes.
3 Q Okay. Does that indicate that this
4 probably refers to the futures fund and not the
5 commodity fund?
6 A I'm sorry. But just given an error in
7 the title, I'm checking each page --
8 Q Sure.
9 A -- to see if there might be other
10 errors.
11 Q Sure.
12 A No. That looks like it all relates to
13 the futures fund.
14 Q Okay. Did you have capacity concerns
15 related to the commodity fund?
16 A No.
17 Q Okay. So it wouldn't make sense that
18 you would even do a capacity analysis for the
19 commodity fund, right?
20 A Well, it might make sense to do a
21 five-year plan, but at this moment we did not
22 have concerns.
23 Q Okay. Do you remember why this
24 analysis was done?
25 A I believe I've testified that we

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1 have -- had been forward looking on capacity for
2 some period of time.
3 Q Right. You've testified that it was a
4 concern as far back as at least the fall of
5 2014. We're now, you know, several years down
6 the road, and there's a formal analysis that's
7 being done. And I'm just wondering why we are at
8 the formal analysis stage. Did something
9 happen?
10 A To the best of my recollection,
11 nothing happened other than I felt that we
12 needed to quantify some of the issues we had
13 discussed around capacity to -- to better inform
14 decisions.
15 Q So the decision to do this
16 presentation was your decision, not in response
17 to requests by Catalyst?
18 A I believe that's correct.
19 Q Okay.
20 A I don't recall a request by Catalyst.
21 Q And after it was prepared, did you
22 send it to Catalyst?
23 A Ms. Rios prepared it. We reviewed it.
24 I don't recall -- I don't recall if we sent it
25 to him, if we had a meeting.

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1 At some point they got it, sure.
 2 Q Well, obviously, they got it in March
 3 of 2017.
 4 A Correct.
 5 Q I'm asking do you believe that they
 6 got it in or about May of 2016 when it's dated?
 7 A That's likely.
 8 Q If you go to the third slide -- I'm
 9 sorry. I guess it's the second. It's entitled
 10 "Volume." Do you see that?
 11 A Yes.
 12 Q So in May of '16, the CME group
 13 reached out to the futures fund and asked for a
 14 phone call? Is that accurate?
 15 A I think that's correct.
 16 Q Were you on the phone call?
 17 A I believe so.
 18 Q What was their concern?
 19 A I don't recall.
 20 Q Okay. It says -- the slide -- I'm
 21 reading from the slide. "We understand that we
 22 are on their radar but also know their limit is
 23 28,000 net short contracts, and we have not been
 24 near that number yet."
 25 Did they call you to talk about how

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1 large your positions are getting, how many
 2 contracts?
 3 A I -- I don't remember that, no.
 4 Q What do you remember?
 5 A I remember that was a phone call from
 6 the CME to one of their larger customers, just
 7 to get acquainted. I think that's how they
 8 expressed it.
 9 Q Has that ever happened to you before?
 10 A What? Has -- has what happened?
 11 Q Before this particular time, has a CME
 12 group ever reached out to you, as one of its
 13 larger customers, to have a phone call?
 14 A I don't know that before this we were
 15 what they considered to be one of their larger
 16 customers. So I don't remember it happening,
 17 no.
 18 Q You can't remember anything else about
 19 that call, what was communicated, what they
 20 said, what you said, anything?
 21 A No. As I said, as I'm looking at this
 22 now, what I recall is it was a get-acquainted
 23 kind of phone call, introductory contact.
 24 As -- as Ms. Rios maintains in this
 25 bullet, they apparently had some internal limit

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1 that they monitored, and we have not been near
 2 that number yet, is what she says.
 3 Q Okay. The next bullet point down says
 4 that "We," meaning the futures fund, "are aware
 5 that the futures fund trades certain months and
 6 strikes to where the fund is a hundred percent
 7 of that particular volume."
 8 Was that a concern of yours?
 9 A No, because, as Ms. Rios continues,
 10 "We have not seen any issues of this regarding
 11 trading."
 12 Q Okay. ADM brought this issue up as
 13 one of their concerns, correct?
 14 A That's what it says here, yes.
 15 Q Did ADM bring this issue up as one of
 16 their concerns?
 17 A I don't recall that specifically, no.
 18 Q You don't recall any concerns voiced
 19 by ADM to the futures fund?
 20 A In my conversations with ADM, their
 21 concern was over options trading in general.
 22 Q What exactly about options trading in
 23 general?
 24 A They had a concern over the inherent
 25 risks in options trading as a part of their

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1 client portfolio.
 2 Q Unrelated -- they didn't have any
 3 concern in their role as an FCM to the futures
 4 fund?
 5 I don't understand what you're saying.
 6 A I'm saying that, what I recall from
 7 having conversation with ADM is, when they
 8 looked at -- as I think FCMs do -- across their
 9 client portfolio to balance their risks, they
 10 expressed a particular concern over having high
 11 volumes of options trading in their customer
 12 client portfolios.
 13 Q And why are they bringing that up with
 14 you at the futures fund?
 15 A Because we are options traders and we
 16 are one of their clients.
 17 Q Did they say that you're a significant
 18 source of the risk?
 19 A They didn't say that, no.
 20 Q Okay. You don't remember anything
 21 else that ADM brought up?
 22 A No.
 23 Q Nothing about volume?
 24 A If they brought something up about
 25 volume, they have complained from time to time

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1 we don't do enough business with them, and they
2 are a relatively small part of our trade
3 allocation. So those discussions may have been
4 had from a commercial standpoint, but I'm not
5 sure.

6 Q The last bullet point indicates that,
7 in April of 2016, the initial margin capacity at
8 the FCMs was insufficient for the fund's trading
9 needs.

10 Is that an accurate statement?

11 A I don't recall specifically. It may
12 have been.

13 Q Do you have any reason to believe
14 that -- do you think Ms. Rios drafted this
15 presentation?

16 A Yes.

17 Q Do you have any reason to believe that
18 she's being untruthful when she makes that
19 statement in here?

20 A I don't know what she means by
21 "insufficient."

22 I don't recall being unable to enter
23 trades based on insufficient margin.

24 Q Do you think she made it up?

25 A No. I'm just not certain what she

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1 means, whether she felt uncomfortable with the
2 margin we had relative to what she perceived we
3 needed to trade the fund, whether we were close
4 to limits.

5 I can't speculate over what she meant
6 by saying that.

7 All I can tell you is that I don't
8 recall not having enough margin to trade the
9 fund at any point.

10 Q Okay. But you could have not had
11 enough margin and you don't recall it?

12 A Anything is possible that I might not
13 recall. That's correct.

14 Q Well, when you got this, did you ask
15 her: What are you talking about?

16 A I don't remember.

17 Q Okay. She goes on to say that the
18 futures fund was traded more to satisfy FCM
19 relationships than trading regular types of
20 positions per the fund strategy.

21 Do you see that?

22 A Yes.

23 Q Is that an accurate statement?

24 A I don't recall ever trading to satisfy
25 FCM relationships.

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1 Q Okay. In April 2016, who's putting on
2 the trades?

3 A I am.

4 Q How would Ms. Rios reach these
5 conclusions without your input?

6 A That's exactly the question that comes
7 to my mind when I read this bullet. I am not
8 sure.

9 Q Did it come to your mind when she
10 presented this to you?

11 A Again, I don't recall this particular
12 bullet being a main part of our discussion.

13 Q Can you say, as you're sitting here
14 today, that these statements in this bullet
15 point are incorrect?

16 A I -- sitting here today, I can tell
17 you that I don't recall having a discussion
18 about this bullet point and I'm uncertain about
19 what she actually meant by it.

20 Q Okay. I understand that. That's not
21 my question.

22 Can you tell me that these are true,
23 not true, or you don't know?

24 A I don't know.

25 Q Okay. So if you look at the next

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1 slide, this is May 2016, The Perfect World
2 Scenario for the Futures Fund, right?

3 A The top of this slide is Five-Year
4 Projection, or is it a different one?

5 Q The first line, The following
6 spreadsheet projects five-year numbers in a,
7 quote, perfect world scenario.

8 A All right. I'm on the same page.

9 Q Do you see that?

10 A I do.

11 Q Okay. So the assumption is zero
12 incoming money from sales. What does that mean?

13 A That means, for purposes of doing this
14 analysis, we assumed no new money coming in.

15 Q An absolute hard close as of May 2016?

16 A No.

17 Q What does it mean?

18 A It means that, for purposes of doing
19 this analysis, we removed the variable of
20 inflows because it was uncertain about what
21 money would come in the fund.

22 Q So the assumption you used, though,
23 was zero?

24 A We used zero in order to look ahead
25 five years and understand that, if we had no

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1 inflows, what would the fund look like?
 2 And it's a typical analysis
 3 methodology. Once you establish that baseline,
 4 you can then look and say: How much money can
 5 we allow to come in based on the analysis that's
 6 been done?
 7 And I do recall that was one of the
 8 assumptions I instructed her to take going
 9 forward.
 10 Q Okay. Did you instruct her to take
 11 these other assumptions, too, for this analysis?
 12 A Sure. We certainly reviewed them,
 13 yes.
 14 Q And the end result of that is that the
 15 fund would not -- of that analysis or projection
 16 is that the fund would not approach \$5 billion
 17 until 2021, correct?
 18 A Let me take a look. I don't recall
 19 off of the top of my head.
 20 Q It's on the next page.
 21 A Yes. That looks like the conclusion
 22 of the spreadsheet.
 23 Q And the assets under management
 24 actually were vastly accelerated from that
 25 projection, the actual ones?

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1 A Again, as I said before, I don't have
 2 in my head levels of "actual" over a particular
 3 time frame.
 4 Q Before the drawdown that occurred in
 5 late '16 and early 2017, the fund was over \$4
 6 billion, correct?
 7 A Yes. That I know. Yes.
 8 Q If you look at volume consideration,
 9 which is the next slide, it says that there are
 10 only three banks that acted -- act as market
 11 makers?
 12 A I think what it says is we are aware
 13 of three banks.
 14 Q Okay.
 15 A There may be more.
 16 Q All right.
 17 A Okay.
 18 Q If any of them exited, that would have
 19 a significant negative impact on the fund
 20 strategy, correct?
 21 A It could, which is the conclusion, but
 22 we're not sure.
 23 Q Okay. So if any of them were to
 24 leave, there's a risk of a significant negative
 25 impact on the fund strategy?

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1 A That was Ms. Rios's conclusion, yes.
 2 Q Did you agree with that conclusion?
 3 A I agreed that there was a possibility.
 4 I agreed with the "could."
 5 Q That's what it says; so do you agree
 6 or not agree?
 7 A I agree.
 8 Q Okay. Thank you.
 9 It says that there also could be a
 10 reduction in the amount of daily contracts that
 11 could be traded.
 12 Would that be a risk to the fund
 13 strategy?
 14 A That would be a risk to the fund
 15 strategy, yes.
 16 Q Okay. It also says the fund is in
 17 the, "top five of volume each month," and,
 18 "likely in the top three."
 19 Do you see that?
 20 A I see that.
 21 Q Why is that important?
 22 A I think it's important to demonstrate
 23 that, while we are certainly not the largest
 24 participant in the market, we are potentially in
 25 the top five so that we are a large participant

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1 in the marketplace.
 2 Q And does that relate to the same
 3 concern regarding increase in size and execution
 4 quality that you talked about before?
 5 A Yes.
 6 Q Okay. And that would also relate to
 7 the fourth bullet point which is, "When one
 8 other large individual floor pit trader was on
 9 vacation, the futures fund percentage of pit
 10 value nearly doubled"?
 11 A Correct.
 12 Q Right?
 13 Okay. So that just sort of -- when
 14 the -- when the other guy is on vacation, this
 15 concern is magnified?
 16 A The concern is magnified, however, we
 17 also noticed that, despite his absence, there
 18 was no perceived difference in execution
 19 quality.
 20 Q Where does it say that?
 21 A It doesn't say that here. That was my
 22 recollection -- my recollection of that period
 23 of time.
 24 Q So you did an actual analysis of the
 25 period of time that the other guy was on

<p style="text-align: right;">Page 430</p> <p>1 vacation and physically analyzed the execution 2 quality and came to that conclusion? 3 A As I've testified previously, the 4 execution quality is not, to my knowledge, able 5 to be analyzed in a qualitative -- a 6 quantitative way., but I do recall hearing the 7 story that a large trader was on vacation and 8 thinking to myself, well, that's good because 9 I'm not noticing -- although our volume 10 percentage goes way up, I'm not noticing any 11 difference in execution quality. 12 So that sticks in my mind because this 13 was an interesting story from the floor about 14 the large trader who's on vacation during that 15 time. 16 Q Slide 9. Wait. Actually the next 17 slide says, "Current FCM status 3.1 billion?" 18 Do you see that? 19 A (No verbal response.) 20 Q Do you see that? 21 A Yes. 22 Q Okay. The last bullet point says, "In 23 April, with three billion in assets and FCM 24 capacity approximately, 1.9 billion, there were 25 trading constraint issues."</p>	<p style="text-align: right;">Page 432</p> <p>1 not telling the truth or you don't know? 2 A I don't know. 3 Q Okay. Sitting here today, you have no 4 reason to believe that she's making it up? 5 A I don't have any reason to believe 6 that she -- yeah, that she's making it up; no. 7 Q Okay. Does that seem like something 8 that she does, just that she doesn't research 9 things, just writes things out without checking, 10 just guesses? Is that her sort of work ethic? 11 A No, not at all. However, this is, 12 again, a subjective issue. 13 In other words, what does it -- what 14 does it mean to constrain trading? 15 You know, so her perception may have 16 been that, oh, my gosh, we're so close to our 17 margin level that Ed can't trade. 18 It's very likely that I reassured her 19 that was not the case. She may have had a 20 different opinion. 21 I'm just speculating on what may have 22 occurred because I simply don't recall saying -- 23 in April saying, my gosh, I can't trade because 24 we don't have enough margins. 25 Q Okay. Well, I didn't say that you</p>
<p style="text-align: right;">Page 431</p> <p>1 Do you see that? 2 A I see that. 3 Q Is that a true statement? 4 A Again, I don't recall there to have 5 been constraints from -- from a margin 6 perspective. I think that's something would 7 stick in my mind. I simply don't recall that 8 being the case. 9 Q Can you think of any reason why Ms. 10 Rios would write that if it wasn't true? 11 A It -- it may have been her belief, but 12 I'm not sure where it came from. 13 Q Where could it come from other than 14 you? 15 A I don't know. 16 Q Was anybody else doing the trading? 17 A No. 18 Q Who would know about trading 19 constraint issues if it wasn't you? 20 A I guess that's my point. I'm -- I'm 21 confused by this bullet. I don't recall there 22 being trading constraints. 23 Q Okay. If Ms. Rios testified that you 24 told her there were trading constraints in 25 April, are you -- is your position that she's</p>	<p style="text-align: right;">Page 433</p> <p>1 couldn't trade either. I just said that the 2 statement is there were trading constraints. 3 A Right. And I don't recall what that 4 might be. 5 Q If you go to -- there's a section that 6 says, "Items that could affect the fund?" 7 And I apologize. The presentation 8 doesn't have numbers -- 9 A Sure. 10 Q -- on them. But do you see what I'm 11 talking about? 12 A Roughly -- okay. I got it, "Items 13 that could affect the fund." 14 Q And so one of those items is an FCM 15 closing the fund's account. Reasons could be 16 lack of profitability, which I think you alluded 17 to is not doing enough volume for their -- 18 A Yes. 19 Q -- needs? 20 Or them not being comfortable with the 21 fund's risk limits? 22 Do you see that? 23 A Yes. 24 Q What does that refer to? 25 A I think that refers, generally</p>

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1 speaking, to -- to the -- that -- the item I
 2 mentioned that -- that I know for sure we heard
 3 from ABM, and that is -- well, I'm speculating.
 4 Two things it could be, and that would be my
 5 honest guess at this thing.
 6 It could be options traders as a part
 7 of an FCM portfolio. We've -- we've heard that
 8 anecdotally, certainly, I do recall directly
 9 from ADM.
 10 And, secondarily, the risk limit,
 11 meaning the collateral limit imposed upon us by
 12 a particular FCM.
 13 Q Okay. The first one you actually
 14 remember ADM raising, correct?
 15 A Yes.
 16 Q The second one do you remember any
 17 FCMs raising with you, or are you just
 18 speculating on that?
 19 A I'm speculating because that was a
 20 common topic of discussion with FCMs about how
 21 much collateral they were willing to --
 22 Q Okay.
 23 A -- allow us --
 24 Q Common discussion of topics with you
 25 relating to the futures fund?

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1 A Yes.
 2 (Reporter clarification.)
 3 BY MR. SCHMIDT:
 4 Q Okay. So I was trying to determine
 5 which of these issues were actually raised by
 6 FCMs. The first one was raised by ADM, correct?
 7 A Yes.
 8 Q Okay. And the second one was raised
 9 by multiple FCMs, is what it sounds like your
 10 testimony is?
 11 A Yes. And what I'm testifying is that
 12 it was a common element of a discussion with an
 13 FCM over our risk limit, which I'm speculating
 14 might refer to our -- our discussion about
 15 collateral and margin being provided to us.
 16 Q So if you flip to the last page?
 17 MR. ZILIAK: The last page of the
 18 third presentation or the same presentation?
 19 MR. SCHMIDT: The same presentation.
 20 It's entitled "Summary."
 21 THE WITNESS: I've got it.
 22 BY MR. SCHMIDT:
 23 Q Okay. So the first point in the
 24 summary of this presentation on capacity of the
 25 futures fund dated May 2016 is that "The future

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1 fund faces many restrictions going forward, but
 2 the primary items are FCM capacity and trading
 3 volume."
 4 Do you see that?
 5 A Yes.
 6 Q Do you agree -- as of May 2016, did
 7 you agree with that statement?
 8 A Yes.
 9 Q And as of May 2016, is that something
 10 that you had communicated to Mr. Szilagyi?
 11 A Yes.
 12 Q The second point is that as -- as of
 13 May 2016, there is only a finite amount of money
 14 that can be raised by wholesalers for the
 15 futures fund where you can still execute the
 16 strategy and produce the returns that you
 17 intend, correct?
 18 A Correct.
 19 Q Is that a true statement as of May
 20 2016?
 21 A Yes.
 22 Q And is that something that you had
 23 communicated to Mr. Szilagyi?
 24 A Yes.
 25 Q Okay.

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1 Sure.
 2 BY MR. WASSERMAN:
 3 Q I believe you testified earlier that
 4 there were occasions -- you recall occasions on
 5 which J.J. told you that the other traders in
 6 the pit were generally aware of your position;
 7 is that correct?
 8 A Yes.
 9 Q When did he first tell you that?
 10 A I don't know.
 11 Q Do you recall whether it was before or
 12 after this May -- May 2016 presentation?
 13 A No.
 14 Q At some point -- well, just going back
 15 to the process by which you enter a trade, you
 16 call J.J., right?
 17 A Yes.
 18 Q And J.J. sees what prices he can get
 19 in the pit?
 20 A Yes.
 21 Q All right. Did there come a time when
 22 the market started to respond to J.J. seeking
 23 prices in the pit?
 24 A He has mentioned that to me from time
 25 to time that that occurs. I don't recall that

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1 there was a particular beginning to it.

2 Q In other words, when he would signal
3 that he was about to bid or offer on an option,
4 the market would move away from you, right?

5 A Yes, sometimes he'd report that
6 happening, yes.

7 Q And what was your understanding of why
8 that would happen?

9 A Typically, my understanding, again,
10 from J.J., would be that the market would move
11 away to allow the -- whoever wanted to kind of
12 pre hedge their trade so that, when we came in,
13 they'd already have bought or sold futures,
14 taken offsetting options position in
15 anticipation of them being able to come in and
16 fill the trade.

17 So they were trying to -- to front run
18 a little bit, so to speak, so that they had a
19 better -- they had their risk covered before
20 they executed with us.

21 Q Do you recall when you were first --
22 when you first became aware of that happening?

23 A No, I don't. That was a fairly
24 anecdotal conversation we had, as far as I can
25 remember, over the life of the fund.

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1 Q In -- in December of 2016, the fund
2 suffered a fairly substantial drawdown, correct?

3 A Yes.

4 Q Had -- were you aware of that
5 happening before the December drawdown?

6 A I'm certain I had conversations with
7 J.J. regarding that before the drawdown. In
8 fact, specifically, as long as you asked, we had
9 conversations about whether that would actually
10 affect our pricing; in other words, the trader's
11 knowledge of our position.

12 The first time, whenever that was, he
13 communicated that to me, I was concerned, and I
14 asked him whether he felt as though that would
15 provide adverse execution.

16 He suggested -- I recall him
17 suggesting that, no, the particular strike
18 doesn't matter as much as the Greeks that can be
19 hedged away through other nearby strikes.

20 Q I'm sorry. I don't -- I don't quite
21 follow.

22 When this started to happen,
23 specifically the market moving away from you in
24 response to -- in anticipation of you trading,
25 when this began to happen, did it, in fact,

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1 adversely affect the prices you got?

2 A Again, I testified that I noted no
3 consistent difference in execution quality.

4 Q Well, to be clear, you testified that
5 with respect to the time period of 2014 to March
6 2016.

7 I'm asking more generally now.

8 When that happened, did it affect the
9 prices that you were able to get?

10 A I'm not certain how that question is
11 different.

12 Q Because it spans a longer period of
13 time. I suppose a different way to ask it would
14 be to say, okay, from March 2016 to December of
15 2016, your testimony is that, at some point, you
16 became aware of traders in the pit trying to
17 front run your trades, right?

18 A Well, I had conversations with -- with
19 J.J. around how traders reacted to our trades
20 from time to time as normal.

21 Q And more specifically, not how they
22 reacted to your trades, but how they reacted to
23 the prospect of you trading, right?

24 A Yes. In other words, whether or not
25 he -- he actually quoted the price on the floor,

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1 whether he called off the floor, whether we
2 looked at the minis or whatever, yeah.

3 (Reporter clarification.)

4 BY MR. WASSERMAN:

5 Q So my question is -- my question is,
6 when you became aware of these circumstances,
7 did it affect the price that you were getting?

8 A I don't believe so because I generally
9 didn't -- no. Short answer is no. I don't
10 think so.

11 Q Why not?

12 A Well, because you asked about the
13 process by which a trade is placed. There's an
14 important step in there. So I would -- I would
15 first establish what I consider to be a fair
16 price for the trade. I would ask J.J. for a
17 quote, and I would compare that quote to what I
18 saw on the electronic market.

19 Obviously, the electronic market is
20 completely unaware of what's going on in the
21 pit. So that's how -- that's my basis for
22 determining whether or not I am getting a fair
23 price.

24 So if I can't get a fair price, I
25 don't execute the trade.

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1 Q So were there times when you -- when
2 you didn't feel -- when you felt like you were
3 not getting a fair price?

4 A There were times when the pricing
5 wasn't suitable for me to enter the trade, so I
6 didn't.

7 Q Well, there were times when the price
8 that J.J. was reporting back to you was
9 different than the price you were seeing on the
10 screen?

11 A Well, the price I'm seeing on the
12 screen is bid offer. So it's always -- back to
13 our earlier --

14 Q All right. Let me rephrase the
15 question?

16 A Yeah.

17 Q Were there times when the spread you
18 were getting from J.J. was wider than the spread
19 you were seeing on the screen?

20 A That was very rare just because of the
21 increments that the contracts traded.

22 Q Do you recall generally from March of
23 2016 to December of 2016 the spreads that J.J.
24 was reporting back to you getting wider?

25 A No. That -- that goes to my previous

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1 testimony around execution quality. There was
2 no consistent difference. There were days when
3 spreads were wide. There were days when spreads
4 were narrow. And that's likely basis normal
5 market functioning around which participants
6 were interested on a particular day, in fact,
7 which participants were able to use other S&P
8 instruments to hedge and who was in the market
9 on that given day.

10 So all the -- all the variables that
11 go into an auction market were present on any
12 given day.

13 Q Were there times when the prices you
14 got back from J.J. were not, in your view, fair
15 market prices and, therefore, you waited to
16 trade?

17 A Sure. There were times when he would
18 give me a quote that I was unwilling to -- to
19 trade.

20 Typically I would leave a limit in
21 place and normal market movement would give me
22 my price. So that's another variable that's in
23 there as well.

24 Q Did the frequency in which you decided
25 to wait, instead of acting on the first price

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1 you got, increase over time?

2 A No, and that goes back to my testimony
3 about execution quality. That's one of the
4 things I would monitor and I noticed no

5 BY MR. SCHMIDT:

6 Q Your asking J.J. for a quote, is that
7 over the phone or via e-mail?

8 A Over the phone most of the time.

9 Q Okay. And when he gives a quote back
10 to you, is it over the phone or e-mail?

11 A Phone most of the time.

12 Q Okay. And when you finally decide to
13 either execute or pass on a trade, is that on
14 the phone or e-mail?

15 A Again, phone most of the time.

16 Q Okay. I'll show you what's been
17 marked as Exhibit 146.

18 (SEC Exhibit No. 146 was
19 marked for identification.)

20 BY MR. SCHMIDT:

21 Q For the record, it's an e-mail June
22 29th, 2016, from Ms. Rios to you entitled "FCM
23 capacity."

24 Do you recognize this document?

25 A Yes.

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1 Q Okay. Can you -- did you ask Ms. Rios
2 to run estimates on margin-to-NAV ratio in or
3 about June of 2016?

4 A I don't recall whether I asked her to
5 or whether she did it on her own.

6 Q Okay. What do these charts tell you?

7 A They are generally telling me that, if
8 we project forward six months into the future,
9 we will have a decrease of margin capacity as a
10 fund -- as a percentage of the fund's AUM under
11 the assumption of certain growth rates in the
12 fund.

13 Q Okay. And is that a concern?

14 A Yes. We -- as I've testified
15 previously, we were monitoring our FCM capacity
16 very carefully.

17 Q And I understand that. I'm just
18 asking why is a decrease margin-to-NAV max ratio
19 a concern? Just explain it to me.

20 A Because, if we don't have a sufficient
21 margin capacity to clear our portfolio, then we
22 can't trade.

23 Q Okay. Do you remember in mid-2016
24 regular reports like this about current capacity
25 at FCMs compared to AUM?

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1 A I don't remember regular reports like
2 this. We -- we did track, for lots of different
3 reasons, our margin capacity and our trading
4 volume of FCMs.
5 Q So I think you had mentioned
6 previously this was a concern that you had as a
7 potential risk way back in fall of 2014. It's
8 obviously continuing through the summer of 2016.
9 Is that fair?
10 A Yes.
11 Q Okay. I show you what's been
12 marked -- this is Exhibit 117.
13 (SEC Exhibit No. 117 was
14 marked for identification.)
15 BY MR. SCHMIDT:
16 Q This is a July 22nd, 2016 e-mail to
17 you from a guy named Mike Zufall, Z-u-f-a-l-l,
18 and Kim Rios. It's from a guy named Larry
19 Milder, M-i-l-d-e-r.
20 A It's actually Milder.
21 Q Thank you for the correction?
22 A Should you ever meet him.
23 Q Okay. And really my only question is:
24 Your e-mail that's the second one on this page,
25 do you see it?

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1 A Yes.
2 Q Okay. What you say is, as of July
3 22nd, 2016, you are certainly not interested in
4 encouraging additional AUM growth.
5 Do you see that?
6 A Yes.
7 Q Why are you not interested in that?
8 A Well, my -- the point of this e-mail,
9 as you see from the first part of the statement,
10 what would be the goal of my portion of the
11 call, is that I was not interested in talking to
12 the sales force because that's not something
13 that I felt was the most value at -- of my time.
14 And my rational in the second sentence
15 was to say: Look, why am I spending time
16 talking to the sales force? We have plenty of
17 AUM growth. Don't need to encourage more. So
18 that's the context behind my statement.
19 Q Okay. So is it your testimony that
20 you're happy with the AUM growth, there's no
21 issue with it, and that's the only reason you
22 don't want to be on the call, and it's not that
23 you would rather have AUM growth slow down at
24 this point?
25 A Well, no. The real answer is, as we

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1 see in this capacity constraint is, we have
2 sufficient asset growth. There's no need for me
3 to be spending effort against additional growth.
4 Q If you look back on Exhibit 34, one of
5 the capacity analyses is dated August 2016; is
6 that correct? One of the attachments?
7 MR. BENSON: In case it helps, Mr.
8 Walczak, it's actually the second presentation.
9 It's attached to the cover page. And it
10 incorrectly says "May 2016" on the cover page.
11 But if you look at the data -- well, if you
12 look -- if you look at the cover e-mail of
13 Exhibit 34, the file name is HFXAX capacity
14 analysis-8-2016, that PDF.
15 And if you read the content of that
16 presentation that includes the May 2016 date,
17 you'll see that it references information that
18 is past May 2016.
19 MR. BYLINA: So the second
20 presentation should read August 2016. Instead
21 it says May. So it looks like a duplicate on
22 its face.
23 THE WITNESS: That's the phrase.
24 MR. BENSON: That's right. That's
25 what I like to say. That's right.

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1 THE WITNESS: All right. Given that,
2 I'm at the title page that says May 2016 but
3 doesn't mean it.
4 MR. BENSON: Great.
5 BY MR. SCHMIDT:
6 Q So let me -- just to give you a frame
7 of reference, let me show you Exhibit 116.
8 (SEC Exhibit No. 116 was
9 marked for identification.)
10 BY MR. SCHMIDT:
11 Q And this references a formal call that
12 occurred in August 2016 regarding the capacity
13 issue.
14 For the record, it's an August 5,
15 2016, e-mail. The importance is indicated as
16 high. The subject is "capacity phone call next
17 week and updates." It's sent by Kim Rios, and
18 the recipients are you, Mr. Amhrein,
19 A-m-r-h-e-i-n, Mr. Szilagyi.
20 Do you see that?
21 A Yes.
22 Q Okay. Do you remember this call in
23 August 2016 about capacity?
24 A I don't remember it specifically, no.
25 I'm sure it took place.

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1 I don't remember specific details from
2 that time.
3 Q Okay. Do you remember anything that
4 was said on the call?
5 A No.
6 Q Do you remember any decisions that
7 were made?
8 A August 2016? No, I don't. I think it
9 would be unlikely there were decisions that were
10 made on that call. That wasn't what usually
11 happens, but I don't recall any.
12 Q As you look at these volume numbers
13 that are here in the e-mail --
14 A Yes.
15 Q -- does that refresh your memory as to
16 whether those volume numbers were discussed with
17 the Catalyst folks in New York, specifically Mr.
18 Amhrein and Mr. Szilagyi?
19 A I don't remember, but I would say it's
20 likely that these items were discussed on the
21 call.
22 Q Okay. Do you remember we looked at a
23 presentation when Ms. Rios said that there were
24 trading constraints in April of 2017?
25 A Yes.

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1 Q Okay. Do you see here where she says
2 in this e-mail that the volume in April was over
3 30 percent?
4 A Yes.
5 Q Does that refresh your recollection as
6 to whether the high pit volume in April caused
7 any trading constraints?
8 A No, it doesn't. But I'll remind you
9 that April was also the month in which,
10 apparently, a large trader was absent from the
11 pit so that our percentage was up on -- on that
12 basis.
13 Q Okay. This e-mail says that risk
14 measures have been adjusted to help deter some
15 of these issues in the future.
16 Do you see that down at the bottom
17 "additional items"?
18 A Yes. I see that.
19 Q What adjustments did you make to risk
20 measures in the summer or August of 2016?
21 A We -- in the summer of 2016, we --
22 best I can recall, we took call position size
23 limits. We lowered those. We lowered our call
24 open option premium numbers, and I believe we
25 also reduced our maximum margin numbers.

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1 Q Anything else?
2 A Those are the three I remember.
3 Q And those relate to the risk
4 parameters that we reviewed yesterday on that
5 daily report that's generated?
6 A Yes.
7 Q That's what you're referring to?
8 A That's correct.
9 Q Okay. Call position size, call open
10 option premium and max margin?
11 A Yes.
12 Q Okay.
13 A By the way, those -- those adjustments
14 were made in response to a -- to risk metric
15 triggers, I believe, in July. They were not
16 done with any consideration of capacity.
17 Q Okay?
18 BY MR. BENSON:
19 Q So did the call go forward on Monday,
20 August 7th or 8th, 2016, as contemplated on
21 Exhibit 116?
22 A I'm certain we had the discussion.
23 Whether the schedule was adjusted, I don't know.
24 Q Okay. But the call did go forward,
25 correct?

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1 A At some point, roughly at this time,
2 for sure.
3 Q Okay. And who participated in it?
4 A I don't remember that.
5 Q Okay. Jerry Szilagyi participated,
6 right?
7 A For sure he was on the call.
8 Q Okay. And do you recall whether
9 anyone discussed any of the capacity analysis
10 presentations that's been marked as Exhibit 34
11 during that -- during that call?
12 A I believe the -- how to say it?
13 The -- the agenda, the meeting was, in fact, to
14 walk through this deck.
15 Q Okay.
16 A That's -- I'm pretty sure that's what
17 occurred.
18 Q Okay. And was there a decision made
19 at the end of the call?
20 A I'm -- I'm very confident there --
21 well, I don't think so.
22 I don't remember for sure, but it was
23 not a typical behavior of Mr. Szilagyi to make a
24 decision at the end of a phone call like this.
25 Q Okay. Were any of the members of the

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1 board of trustees of the Mutual Fund Series
 2 Trust invited to participate in that call?
 3 A No.
 4 Q Okay. I believe yesterday you
 5 discussed how you have attended two meetings of
 6 the board of trustees of Mutual Fund Series
 7 Trust in person?
 8 A Yes.
 9 Q You participated in one telephone call
 10 with the full board of trustees?
 11 A Yes.
 12 Q And then you participated in one call
 13 with a portion of the board of trustees,
 14 correct?
 15 A Yes.
 16 Q During any of those in-person or
 17 telephonic meetings, have you ever discussed
 18 capacity constraints -- you yourself discussed
 19 capacity constraints with any of the board of
 20 trustees?
 21 A I don't recall doing that, no.
 22 Q Okay. Do you know whether Mr.
 23 Szilagyi, as a member of the board of trustees,
 24 has shared information relating to capacity
 25 constraints with his fellow board members?

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1 A I don't know.
 2 Q Have you ever asked him?
 3 A No.
 4 Q So as of August 2016, there's been two
 5 analyses or two presentations circulated to Mr.
 6 Szilagyi regarding capacity constraints, right?
 7 A Yes.
 8 Q Okay. And who's the ultimate decision
 9 maker, in your view, at Catalyst Capital
 10 Advisors?
 11 A Mr. Szilagyi.
 12 Q Mr. Szilagyi.
 13 So in your -- in your mind, if you
 14 wanted to bring an issue to someone at Catalyst
 15 who could make a decision or make a change, it
 16 would be Mr. Szilagyi, right?
 17 A Yes.
 18 Q Okay. And you actually -- you did
 19 that? Well, either you or Ms. -- Ms. Rios did
 20 that, right?
 21 A Yes.
 22 Q With regard to the capacity issues?
 23 A Yes.
 24 Q Okay. And you did it not -- not once,
 25 but by August 2016, you had done it on a number

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1 of occasions; at least two times in
 2 presentations and then other times through
 3 e-mails, right?
 4 A Yes. We had planning sessions.
 5 Again, forward looking. The purpose of the
 6 meeting, again, to be clear, was not to say we
 7 are in trouble. It was to say, let's look
 8 forward so that we don't get in trouble without
 9 realizing it and without being able to plan for
 10 it.
 11 Q Hey, guys, this is a potential risk we
 12 should be aware of. Let's make sure that we're
 13 managing to avoid any calamities?
 14 A Yes. That's correct.
 15 Q Okay. And during -- so how many
 16 conversations and e-mails do you think you
 17 exchanged with Mr. Szilagyi on this issue of
 18 capacity?
 19 A I have no idea.
 20 Q More than two?
 21 A I don't recall how many times I might
 22 have e-mailed him on it. Certainly more than
 23 twice that I talked to him about it, sure.
 24 Q Well, I think we have looked at at
 25 least two e-mails. I mean --

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1 A Sure.
 2 Q -- is it fair to say that you -- this
 3 was a persistent topic of conversation over many
 4 years, right?
 5 A Yes. I've testified that it was not
 6 frequent but fairly regular.
 7 Q Okay. And did you ever ask Mr.
 8 Szilagyi whether this is something that needed
 9 to be disclosed to investors in the futures fund
 10 in, for instance, the prospectus?
 11 A No, I did not.
 12 Q In -- in any written form?
 13 A No, I did not.
 14 Q And he never asked you whether, in
 15 your view, this is a risk that needed to be
 16 disclosed to investors, right?
 17 A He didn't ask me about disclosures,
 18 no.
 19 Q You never talked to Mr. Szilagyi about
 20 what needed to be disclosed and what didn't need
 21 to be disclosed to investors, right?
 22 A More recently I've had some
 23 discussions with him about certain attributes of
 24 risk management and trading, yes.
 25 Q And when did those discussions begin?

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1 A Maybe in October, November of last
 2 year.
 3 Q So October or November of 2017, right?
 4 A Correct.
 5 Q And, ultimately, you're not an
 6 employee of Catalyst Capital Advisors, right?
 7 A As I understand the word, I'm not.
 8 Q Do you believe that, as an independent
 9 contractor, an individual who has a contractual
 10 relationship with Catalyst Capital Advisors, you
 11 have the authority to dictate how Catalyst makes
 12 disclosures to investors?
 13 A No.
 14 Q Okay. And you've never demanded or
 15 requested that a disclosure be made by Catalyst
 16 one way or the other, right?
 17 A That's correct, I have not.
 18 Q Okay. And you've never looked at a
 19 disclosure that Catalyst did make and say, I
 20 disagree; take that disclosure out, right?
 21 A No.
 22 Q Okay. So did you -- did you create --
 23 what was your role in creating the August
 24 version of the May 2016 capacity presentation?
 25 A I certainly reviewed it. I may have

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1 written parts of it. Again, Ms. Rios and I
 2 collaborated. So it's not -- it's not crystal
 3 clear in my mind how much I wrote, how much I
 4 edited, et cetera. So this was a combination
 5 document.
 6 Q It was a document that was important,
 7 in your view, that it be accurate and factually
 8 correct, right?
 9 A Yes.
 10 Q Okay. And you wanted it to present an
 11 accurate reflection of the -- of the situation
 12 facing -- facing the futures fund in terms of
 13 capacity, right?
 14 A Yes.
 15 MR. ZILIAK: I apologize. I'm a
 16 little confused. You said the August version of
 17 the May presentation? Which -- which document
 18 are you referring to here, please?
 19 MR. BENSON: That is the second
 20 presentation that's attached as an exhibit -- as
 21 an --
 22 MR. ZILIAK: Okay.
 23 MR. BENSON: -- attachment to the
 24 cover e-mail of Exhibit 34.
 25 MR. ZILIAK: All right. Okay.

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1 Understood now. Thank you very much.
 2 MR. BENSON: Okay.
 3 BY MR. BENSON:
 4 Q And your answers that you just gave,
 5 they would be the same for the May 2016
 6 presentation too, right?
 7 A Yes.
 8 Q Okay. And these were presentations
 9 that you didn't spend five minutes on and say,
 10 "Looks good."
 11 You spent some time to make sure that
 12 you were comfortable with the content, right?
 13 A I did review them. I can't tell you
 14 that I studied them. It's an internal meeting.
 15 It's sufficient. In other words, I didn't
 16 wordsmith it.
 17 Q Uh-huh.
 18 A I didn't argue with some of the
 19 subjective points that Ms. Rios felt were
 20 important.
 21 I felt it was important to let her
 22 speak her mind.
 23 So did I review those in the same way
 24 as I would prospectus, for example? No.
 25 Q But you didn't, for instance, say,

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1 "This is wrong. It cannot go to Mr. Szilagyi,"
 2 right?
 3 A Right. I didn't see anything in there
 4 that -- in -- in this presentation that -- that
 5 I would have said, "No, let's not bring that
 6 up."
 7 Q So at the time, it was accurate?
 8 A Well, it was certainly reasonable to
 9 have as a discussion point.
 10 Q I'm not sure that answers my question.
 11 A So some -- some of these statements
 12 are -- are -- reflect opinions.
 13 Q Okay.
 14 A And -- and so the meaning of my
 15 testimony was to suggest that nothing in here
 16 did I feel was inappropriate to express as a
 17 part of the discussion about capacity.
 18 MR. BENSON: The end --
 19 MR. SHANK: Is there anything in there
 20 that you disagree with, even if you thought it
 21 was appropriate for discussion?
 22 THE WITNESS: As I sit here today,
 23 I've already testified that some of Ms. Rios's
 24 comments about capacity constraining trading,
 25 I'm not fully aware of what she meant. So my

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1 recollection is that I was not constrained in
 2 that manner; so whether that's incorrect or a
 3 difference of opinion, I can't say.
 4 1 BY MR. BENSON:
 5 Q Yeah. I think what I'm getting at is
 6 there was nothing in either the May 2016 or
 7 August 2016 presentation that had a statement
 8 that was objectively unreasonable, right?
 9 A Well, again, to my previous testimony,
 10 I have said that I did not believe there were
 11 constraints in trading, for example, in April.
 12 That's when I remember.
 13 But if I was -- I didn't object to her
 14 bringing that up.
 15 I don't remember it being brought up
 16 actually, but I didn't object to it.
 17 Q Okay. And not to belabor this. So
 18 you remember having a conversation via telephone
 19 where at least you, Ms. Rios, and Mr. Szilagyi
 20 walked through the presentation deck, right?
 21 A Yes.
 22 Q Did Mr. Szilagyi ask you any
 23 questions?
 24 A I'm certain he did. I don't recall
 25 what specifically he asked.

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1 Q At the end of the conversation, did
 2 you feel that you had fully apprised him of the
 3 concerns or at least the issues surrounding, you
 4 know, capacity risk related to the futures fund?
 5 A Yes, I did.
 6 Q Okay. And you didn't feel that you
 7 had provided him with only half of the
 8 information that he needed; you had provided him
 9 with all the information he needed to proceed
 10 however he chose?
 11 A Yes.
 12 Q Okay. There's a couple questions I
 13 have on the actual presentation.
 14 So if you turn to the third page of
 15 the August 2016 presentation. Which is
 16 identified as the May 2016 presentation. So the
 17 second May 2016 presentation in Exhibit 34.
 18 A What's -- what's the title?
 19 Q The third slide is, "HFXAX capacity as
 20 constrained by two factors?"
 21 MR. ZILIAK: Sir, there are multiple
 22 slides with that title. What's the subhead,
 23 please?
 24 MR. BENSON: It's "execution quality."
 25 MR. ZILIAK: Great. Thank you.

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1 BY MR. BENSON:
 2 Q The final bullet point says,
 3 "Measurable impact notwithstanding, we are
 4 uncomfortable with volume share consistently
 5 above 30 percent."
 6 Do you know who the "we" in that
 7 sentence is?
 8 A It's a -- probably a Royal pronoun,
 9 meaning me.
 10 Q Okay. Meaning the folks in Wisconsin?
 11 A Yes.
 12 Q Right?
 13 A The -- the team managing the futures
 14 fund.
 15 Q And, again, I just want to be clear
 16 that I understand, Mr. Walczak. This is a
 17 presentation that the team in Wisconsin created
 18 to inform the folks at Catalyst in New York,
 19 right?
 20 A That's correct.
 21 Q Okay. And did you at the time, August
 22 2016, believe that the statement, "We are
 23 uncomfortable with volume share consistently
 24 above 30 percent" -- did you share that opinion?
 25 A Yes. And -- and to -- to recall, I've

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1 testified on that yesterday actually, that we
 2 monitored exchange volume percentages. There
 3 was no hard-and-fast ceiling other than a
 4 general judgment that volume share consistently
 5 among 30 percent just seemed too large.
 6 Q Okay. And you communicated that to
 7 Mr. Szilagyi, right?
 8 A Yes. It was -- it was a basic
 9 assumption in the analysis to say we can't tell
 10 you that it's not possible to go to 60 or 70,
 11 but we want to set that ceiling at 30 because we
 12 think that's a reasonable level, especially for
 13 purposes of this analysis.
 14 Q And did Mr. Szilagyi have a reaction
 15 to that point?
 16 A I don't recall that he -- again, I
 17 don't recall specifics, other than I certainly
 18 don't recall he disagreed with it.
 19 Q Okay. It's reasonable to assume that
 20 he's in a position to defer to your judgment and
 21 experience, correct?
 22 A Yes.
 23 Q You're the person who's closest to the
 24 fund. You're the person who's actually trading
 25 the fund, right?

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1 A Yes.
 2 Q He doesn't make any trading decisions
 3 for the futures fund as of August 2016, right?
 4 A Correct.
 5 Q He's not reviewing the daily trade
 6 blotter, for instance, right?
 7 A That I don't know.
 8 Q Okay. Did he --
 9 A It wouldn't surprise --
 10 Q -- have access to it?
 11 A Sure.
 12 Q Oh, he does. Okay. Okay.
 13 A Yeah.
 14 Q If you turn to the next page, which
 15 has the heading "HFXAX capacity as constrained
 16 by two factors," and the subheading is "Clearing
 17 broker, open paren, FCM, close paren, collateral
 18 restrictions?"
 19 The final two bullet points say -- the
 20 first one -- the second to the last says, In
 21 some cases, our trading activity does not
 22 satisfy FCM internal profitability metrics, open
 23 paren, ROC, close paren. In May, one of our
 24 FCMs closed our account for this reason.
 25 Why -- was it significant that one of

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1 the FCMs closed the account?
 2 A Well, it was significantly certainly
 3 to our capacity analysis because that reduced
 4 our FCM capacity, yes.
 5 Q And at this time, August 2016, you're
 6 trying to increase the number of FCMs, not
 7 decrease the number of FCMs, correct?
 8 A Right. Actual capacity could be a
 9 number. It could be the capacity to each
 10 individual. But that's correct, yes.
 11 Q Okay. One point that I don't know if
 12 we have clarified, and I apologize. I had to
 13 step out so you might have touched on it.
 14 Do you know who entered into the
 15 contract with the FCMs?
 16 Was it Catalyst Capital Advisors?
 17 Was it Ed Walczak?
 18 Was it Kim Rios?
 19 Was it Harbor Financial, L.L.C.?
 20 Who were the parties to the contract,
 21 do you know?
 22 A I know for certain it was not Harbor
 23 Financial, L.L.C.
 24 Q Okay. I assume you also know it was
 25 not you in an individual capacity?

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1 A In an individual capacity, no.
 2 It -- it may have been me and/or
 3 Kimberly signing on behalf of Catalyst, which
 4 may or may not have been correct.
 5 But there were -- there were certain
 6 documents, and I think it may have even depended
 7 on internal FCM requirements --
 8 Q Uh-huh.
 9 A -- certain documents Mr. Szilagyi
 10 signed. But it didn't -- my recollection is it
 11 was -- it wasn't always consistent.
 12 Q An FCM, in order to enter into a
 13 contract, would require some financial
 14 information about their client, right?
 15 A That's not atypical. But I can't
 16 comment on how we chose the client.
 17 (Reporter clarification.)
 18 BY MR. BENSON:
 19 Q So it's common for an FCM to seek
 20 financial information about their client?
 21 A In my experience, yeah, I would say
 22 it's common.
 23 Q Okay. And why -- why would that be
 24 common?
 25 A They want to understand whether or not

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1 their client is financially sound to support
 2 their trading activity.
 3 Q Okay. And then just the last bullet
 4 point in the slide says, "Based on low
 5 profitability, we operate under a, 'cap charge,'
 6 system at two of our FCMs. Depending on terms,
 7 this can roughly double transaction costs."
 8 Do you believe that that conclusion
 9 that the cap charge can, quote, roughly double
 10 transaction costs, was accurate as of August
 11 2016?
 12 A It -- it was accurate in terms of
 13 "roughly"; and depending on "terms," it could
 14 double transaction costs at a particular FCM.
 15 Q Okay. Okay. I think that's all I've
 16 got on this. Let me make sure.
 17 BY MR. SCHMIDT: Who's the FCM that
 18 terminated or otherwise got out of the agreement
 19 with Catalyst in mid-2016?
 20 THE WITNESS: I don't recall which one
 21 it was.
 22 BY MR. BENSON:
 23 Q It was Mizuho, right?
 24 A That's possible. They came back. So
 25 I think that is correct, actually.

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1 Q And actually we'll kind of cut to the
2 chase.
3 In October of 2016, another FCM
4 terminates its relationship with Catalyst,
5 right?
6 A I believe Gain Capital as a result of
7 being acquired.
8 Q Wasn't it Morgan Stanley? We can look
9 at the documents.
10 A No. I think -- no. Gain is the one I
11 remember -- the other one I remember terminating
12 the relationship based on an acquisition. But,
13 yeah, that's what I remember.
14 Q And I guess just one last question:
15 When you were going over Exhibit 116 with Jake,
16 you talked about affirmative steps that you and
17 Ms. Rios had taken in light of the capacity
18 concerns, right?
19 A I don't recall further steps.
20 Q To reduce risk.
21 MR. SCHMIDT: I believe you modified
22 certain risk metrics, is what you testified to.
23 THE WITNESS: Yes. And in my
24 testimony, I mentioned that was not based on
25 capacity considerations. That was based on the

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1 drawdown we had and reevaluation of those risk
2 metrics post -- no. I'm sorry. We triggered
3 risk. And as a result of that risk trigger,
4 we -- we evaluated our -- our metrics and chose
5 to reduce some of them.
6 BY MR. BENSON:
7 Q Okay. So I misunderstood you.
8 So as of August 2016, you had not
9 taken any affirmative steps in terms of either
10 changing the way that you put on trades, put off
11 trades, entered or exited positions or monitored
12 risk based on the capacity analyses that you had
13 done. Is that a fair statement?
14 A Yeah, it is. That's -- that's my
15 recollection. I don't recall making any changes
16 to trading.
17 MR. BENSON: Okay.
18 BY MR. WASSERMAN:
19 Q Do you recall having any -- do you
20 recall having any discussions with anyone about
21 how the funds -- the size of the fund's position
22 could affect its ability to get out of those
23 positions?
24 A I don't recall specific discussions on
25 that, no.

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1 Q Do you recall general discussions on
2 it?
3 A No.
4 Q You don't recall any discussions about
5 how the size of the fund's positions could
6 affect its ability to get out of them?
7 A No.
8 BY MR. BENSON:
9 Q So just before we close out the August
10 2016 presentation, the penultimate slide, the
11 second to the last side, it says, "Our size and
12 capacity analysis have surfaced other important
13 issues."
14 And there are five bullet points on
15 that slide. They are increased regulatory and
16 exchange scrutiny.
17 A Hold on. I haven't caught up to you
18 yet. Where are we?
19 Q This is the second to the last slide
20 of the --
21 A Yeah. But there's a whole --
22 MR. SCHMIDT: No, the middle
23 presentation.
24 THE WITNESS: The middle presentation?
25 MR. SCHMIDT: Yeah.

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1 THE WITNESS: Okay.
2 BY MR. BENSON:
3 Q It looks like this.
4 A I have it.
5 Q Okay. So that -- that document is
6 entitled "Our size and capacity analysis has
7 surfaced other important issues," correct?
8 A Yes.
9 Q So the first is "increased regulatory
10 and exchange security?"
11 What was meant by that?
12 A I think it was meant that the larger
13 we get, the more a regulator like yourself or an
14 exchange might pay attention.
15 Q Because you have the -- such a large
16 volume that you are potentially putting the
17 trading of that -- of those products at issue.
18 You have the ability to possibly move the market
19 based on your position; is that fair to say?
20 A I have -- I have no idea why it would
21 be other than it seemed to make sense to us that
22 size would attract attention.
23 Q Okay. And then we talked about
24 increasing cost of FMC capacity due to
25 profitability requirement. That was the cap

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1 charges we talked about earlier, right?
 2 A Yes.
 3 Q "Decreasing effectiveness of FCM
 4 capacity due to more restrictive risk metrics,"
 5 what does that mean?
 6 A I'm not sure. I'm happy to think
 7 about it for a moment.
 8 Q Well, I'll give you an idea. Is it --
 9 it is -- essentially was there concerns that
 10 FCMs -- they don't want to be concentrated in a
 11 few large clients because it actually increases
 12 their own risk?
 13 A No. I believe what it means is
 14 restrictive risk metrics is on the FCM side. So
 15 that's one of the reasons why an FCM might put a
 16 multiple on top of span margin.
 17 So we did run into some issue. I
 18 think there was a bullet point, for example,
 19 when an FCM suddenly decided after a review of
 20 their portfolio, that futures fund or an option
 21 trader, we're charging them an exchange minimum
 22 margin. Let's charge them 1.5 to protect
 23 ourselves. Let's have more collateral on hand.
 24 So this is what that refers to. When
 25 an FCM suddenly decides to do that, that's what

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1 it means, decreasing effectiveness, essentially
 2 reducing capacity.
 3 Q Right. And they would do as a
 4 defensive measure to protect -- the FMC would do
 5 that as a defensive measure to protect
 6 themselves?
 7 A Yes. And in this case, that's exactly
 8 what is restrictive risk metrics. In some
 9 cases, they would do it for other reasons, but
 10 that's a risk.
 11 Q And then you -- the fourth bullet
 12 point is, "The degree of participation on a
 13 daily basis of a few specific large
 14 counterparties has a material impact on
 15 execution quality," right?
 16 A (Nodding head.)
 17 Q And that happened -- an example of
 18 that would be that a market -- there might be
 19 four or five market makers at a given time. But
 20 on certain days, only three or four of those
 21 five market makers would actually be available;
 22 is that right?
 23 A Yes.
 24 Q Okay. So the availability of
 25 counterparties is reduced?

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1 A Yes.
 2 Q Okay. And then the final bullet point
 3 is, "There's a risk that pit trading in our
 4 market is discontinued with the time frame of
 5 this analysis."
 6 What did you mean by that?
 7 A Wait. Maybe I'm on the wrong page.
 8 Q The fifth bullet point says, "There is
 9 a risk that pit trading in our market is
 10 discontinued within the time frame of this
 11 analysis."
 12 A Is that the right page?
 13 MR. ZILIAK: Hold on. No.
 14 THE WITNESS: No.
 15 MR. ZILIAK: How weird how they do
 16 this presentation. Let's see. So I was trying
 17 to figure out what he is looking at.
 18 MR. BENSON: November. He's looking
 19 at the November 1?
 20 MR. ZILIAK: Yes.
 21 THE WITNESS: Yes.
 22 MR. ZILIAK: So sorry. You are
 23 looking at this slide, please.
 24 THE WITNESS: Okay.
 25 BY MR. BENSON:

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1 Q So you're looking at the right slide
 2 now. The first four bullet points, you agree,
 3 are -- that we just went over are reflected on
 4 that slide, right?
 5 A Yes.
 6 Q Okay. The fifth bullet point is,
 7 "There's a risk that pit trading in our market
 8 is discontinued within the time frame of this
 9 analysis."
 10 Is that just a recognition that
 11 trading is moving on to the electronic
 12 platforms?
 13 A Sure.
 14 Q Okay. And why would that create --
 15 why is that -- why is that a risk?
 16 A Well, it's a risk in the context of a
 17 capacity discussion because the alternative to
 18 continue trading S&P options would be
 19 electronically. The electronic markets, the
 20 meaning is one-fifth the size; transaction costs
 21 go up. I had no experience with execution of
 22 those markets. So it's -- it's a risk that we
 23 have to move our trading to a different exchange
 24 or platform.
 25 Q Okay. So you -- if I'm correct, by

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1 August of 2016, you identified, at least on this
 2 page alone, five risks related to capacity, and
 3 you shared that with Jerry Szilagyi, right?
 4 A Yes.
 5 Q And as far as you know, there's
 6 nothing more you could have done to make him
 7 aware of those. You fully advised him of the
 8 risks?
 9 A Yes.
 10 Q Okay. So if he needs to make a
 11 decision about how to proceed regarding capacity
 12 risks, he had all the information to make the
 13 decision that he choose -- he chose?
 14 A Yes. I think that's fair.
 15 Q Okay. So then if you move to the next
 16 page of this third middle presentation, it says,
 17 "HFXAX capacity limitations require strategic
 18 choices across several fronts."
 19 And there are five bullet points
 20 again, right?
 21 A Yes.
 22 Q Okay. And if I read this correctly,
 23 is this an example of you and Ms. Rios basically
 24 giving Mr. Szilagyi and the folks from New York
 25 at Catalyst Capital Advisors ideas for how to

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1 deal with the risk that you have identified?
 2 A Yes.
 3 Q Okay. And, again, you are a
 4 contractor. You're not an employee of Catalyst
 5 Capital Advisors. So am I correct that you
 6 don't believe -- at least as of August 2016,
 7 you -- you don't believe you have the authority
 8 to implement any of these five alternatives,
 9 right?
 10 A Correct.
 11 Q Okay. Who -- who would, as of August
 12 2016, have the authority, in your mind, to
 13 implement any or all of those strategic choices?
 14 A Mr. Szilagyi.
 15 Q Okay. Thank you.
 16 So if we go to the next page in
 17 Exhibit 34, you'll see that there's a third
 18 presentation, and this one is identified
 19 "November 2016."
 20 Have you ever seen this document?
 21 A Yes.
 22 Q Okay. Did you have any involvement in
 23 drafting this document?
 24 A Yeah, the same as prior. Some parts I
 25 probably wrote; some I edited, sure.

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1 Q And, again, you wanted this document
 2 to be accurate at the time that it was provided
 3 to its readers, right?
 4 A Sure. Yes.
 5 Q And do you recall who the intended
 6 audience of this presentation was?
 7 A Again, this would be the same
 8 audience. I mean primarily Mr. Szilagyi and
 9 whoever else he chose to bring into the
 10 conversation.
 11 Q And do you recall ever having a
 12 conversation regarding this presentation with
 13 Mr. Szilagyi or anyone else at Catalyst Capital
 14 Advisors in New York?
 15 A This one, I'm not sure. I'm not sure
 16 whether we had a meeting, phone discussion, or
 17 simply submitted it.
 18 Q Okay. Is it your understanding that
 19 this presentation ultimately was provided to Mr.
 20 Szilagyi, though?
 21 A I think so.
 22 Q Do you have any recollection of
 23 discussing this presentation with Mr. Szilagyi
 24 or anyone else at Catalyst Capital Advisors?
 25 A I'm -- I'm -- I'm not certain

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1 whether -- whether we had a discussion on this
 2 particular presentation or not.
 3 Q Okay. So why -- so you -- looking at
 4 Exhibit 34, there was a presentation created by
 5 you and Ms. Rios in May of 2016, August of 2016,
 6 and November of 2016. So six months.
 7 Why -- why were there three
 8 presentations?
 9 A I think it was done on a -- roughly, a
 10 quarterly basis, and we -- as I said, we -- we
 11 originally put forth this analysis because I
 12 felt that we needed to have a framework to
 13 continue our discussions because prior to this,
 14 they had been more informal, subjective
 15 conversations about capacity. We raised a lot
 16 of issues, but I felt that beginning, I guess,
 17 in May when the first one was done that it was
 18 time to become more formal about capacity
 19 planning.
 20 Q And you wanted to make sure that
 21 Catalyst Capital Advisors, the named advisor to
 22 the futures fund, was aware of the issue, right?
 23 A Yes. That's correct.
 24 Q And -- and you felt, through the
 25 creation and delivery of these presentations,

<p style="text-align: right;">Page 482</p> <p>1 you were satisfying that obligation, right?</p> <p>2 A Right. I don't know that there was an</p> <p>3 obligation. It was -- it was something that I</p> <p>4 felt was important to communicate.</p> <p>5 Q Perfect. Thank you.</p> <p>6 So if you look at the -- the cover</p> <p>7 page of the November 2016 presentation -- second</p> <p>8 page, third page, fourth page -- the fifth page,</p> <p>9 it's entitled "HFXAX FCM capacity: May versus</p> <p>10 October 2016," right?</p> <p>11 A Yes.</p> <p>12 Q Okay. And then on the left-hand</p> <p>13 column, it says, "May FCM span capacity equals</p> <p>14 1.65 B," right?</p> <p>15 A Yes.</p> <p>16 Q On the right-hand column, it says</p> <p>17 "October FCM span capacity equals 3.25B,"</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q Then there's an asterisk at the bottom</p> <p>21 of the page which says, asterisk, Morgan</p> <p>22 Stanley, open paren, October, close paren, and</p> <p>23 Mazuho, open paren, May, close paren, both ended</p> <p>24 agreements this year.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 484</p> <p>1 upper range of the risk parameters in light of</p> <p>2 capacity issues?</p> <p>3 A No. We -- we did not because I</p> <p>4 remember that very specifically. The -- the</p> <p>5 margin limits were triggered at some point, and</p> <p>6 that caused us to review our risk parameters and</p> <p>7 elect to reduce them. But we didn't -- I mean</p> <p>8 reducing our risk limits doesn't solve a</p> <p>9 capacity issue. It's meant to address risk.</p> <p>10 Q I understand. And I -- I might be</p> <p>11 wrong, but isn't the idea of reducing the upper</p> <p>12 range of the risk parameters to identify -- to</p> <p>13 give you a way of identifying potential capacity</p> <p>14 issues in advance of a problem?</p> <p>15 A No. Absolutely. They are done with</p> <p>16 respect to risk. Remember, the collateral</p> <p>17 capacity span margin is a risk metric. So we --</p> <p>18 we reduce the ceiling or the trigger point on</p> <p>19 that risk metric to manage risk.</p> <p>20 BY MR. SCHMIDT:</p> <p>21 Q I think the question, though, is a</p> <p>22 risk parameter -- one or more was triggered,</p> <p>23 right?</p> <p>24 A Yes.</p> <p>25 Q Okay. Then you had a discussion about</p>
<p style="text-align: right;">Page 483</p> <p>1 A Yes.</p> <p>2 Q Does that refresh your recollection</p> <p>3 that two FCMs ended agreements with Catalyst</p> <p>4 Capital Advisors in 2016?</p> <p>5 A Yes.</p> <p>6 Q And you believe that statement to be</p> <p>7 accurate, right?</p> <p>8 A Yes.</p> <p>9 Q Okay. And if you turn to the next</p> <p>10 page, "HFXAX risk parameters and FMC capacity,"</p> <p>11 there's a box with text in the middle of it.</p> <p>12 That will read very well in a transcript.</p> <p>13 On the upper right-hand corner, do you</p> <p>14 see the box with a text in it?</p> <p>15 A Yes.</p> <p>16 Q Okay. And that text says, "At current</p> <p>17 risk parameters, there is not enough FCM</p> <p>18 capacity to trade the fund to its upper range of</p> <p>19 risk parameters. These parameters were already</p> <p>20 reduced once in July," right?</p> <p>21 A Yes.</p> <p>22 Q So I'm just trying to figure out if</p> <p>23 this refreshes your recollection as to whether</p> <p>24 you or Ms. Rios or anyone else involved with the</p> <p>25 management of the futures fund had reduced the</p>	<p style="text-align: right;">Page 485</p> <p>1 "do we need to modify any of these?"</p> <p>2 A Yes.</p> <p>3 Q Is that fair?</p> <p>4 A Yes.</p> <p>5 Q As part of that discussion, did the</p> <p>6 concept of capacity ever come up, or it was</p> <p>7 never included as part of those discussions?</p> <p>8 A Again, I don't remember. I remember</p> <p>9 discussing risk. I don't remember that capacity</p> <p>10 entered that same discussion.</p> <p>11 Q So you don't know one way or the</p> <p>12 other?</p> <p>13 A Right.</p> <p>14 BY MR. BENSON:</p> <p>15 Q And then if you look at the next</p> <p>16 slide, it says "pit volume." Okay?</p> <p>17 A Yes.</p> <p>18 Q And if you go to the second page</p> <p>19 behind that slide, it says "How high-call volume</p> <p>20 percentage affects trading"?</p> <p>21 A Yes.</p> <p>22 Q And you see "HFXAX percentage of pit</p> <p>23 call volume," right?</p> <p>24 A Yes.</p> <p>25 Q Do you remember earlier today Jake and</p>

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1 Sam and I think myself asked you some questions
 2 about looking at the futures fund trading volume
 3 in relation to the overall futures market and
 4 then also looking at it with respect to the call
 5 market --
 6 A Yes.
 7 Q -- or the put market? Do you remember
 8 that?
 9 A Yes.
 10 Q Okay. Does this slide reflect an
 11 analysis of the futures fund's volume with
 12 respect to that call segment of the market?
 13 A And we are looking at the page
 14 entitled "How high-call volume percentages
 15 affects trading"?
 16 Q Yes.
 17 A And so I'm sorry. Could you ask the
 18 question again?
 19 Q What does this -- what -- what does
 20 this page reflect in terms of the percentages to
 21 you?
 22 A It -- it reflects what percentage our
 23 trading was of call volume in -- in the futures
 24 pit.
 25 Q Okay. And would you agree that there

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1 are percentages for March, July, September,
 2 June, August, and October?
 3 (Reporter clarification.)
 4 BY MR. BENSON:
 5 Q March -- I'm sorry. March, June,
 6 July, August, September and October.
 7 And then underneath that, it says
 8 "Average of six months, the fund is 39 percent
 9 of pit call volume."
 10 Do you agree with that?
 11 A I don't actually know whether that's
 12 an average of these numbers on the page or a
 13 true 39 percent of total six-month volume.
 14 But --
 15 Q And I didn't ask whether you knew it.
 16 I just asked whether that's what they -- what
 17 they -- the slide reflects.
 18 A That's what the presentation says,
 19 yes.
 20 Q Okay. Do you recall discussing this
 21 specific slide with anyone at Catalyst?
 22 A No.
 23 Q Okay. You would agree that the
 24 percentage of the futures fund's volume of the
 25 pit call market in June, July, August,

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1 September, and October -- they were all greater
 2 than 30 percent, right? At least according to
 3 this document?
 4 A Yes.
 5 Q And the average six months, at least
 6 according to this document, was 39 percent of
 7 the pit call volume, right?
 8 A Yes.
 9 Q Okay. Is that -- was that concerning
 10 to you?
 11 A It -- it was concerning certainly in
 12 the context of this document that -- that's why
 13 we put it in here, to say that we do have a high
 14 level of overall volume in the pit as well as
 15 call volume.
 16 And as we said before, subjectively,
 17 that was something we wanted to monitor.
 18 Q And, in fact, if you go to the
 19 previous slide, that fund S&P options pit volume
 20 2016, that -- that reflects the futures fund's
 21 volume as a percentage of the total S&P market,
 22 both calls and puts, right?
 23 A Yes.
 24 Q Okay. So through this -- these two
 25 slides, again, you're advising Catalyst Capital

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1 Advisors of how large the futures fund's call
 2 volume is related to the futures market, right?
 3 A Yes. This second slide was done to
 4 emphasize -- for a point of emphasis, to get a
 5 point across, that we should be mindful of
 6 our -- of our volume even if the overall volume
 7 is -- is not quite as disquieting.
 8 Q Okay. And then to really drive home
 9 the point, you know, there's this comment from
 10 pit trader. Do you know who the pit trader is?
 11 A You know, I don't. This is -- I know
 12 this is something Kimberly got. I mean, I --
 13 you know, we -- we only deal with largely two
 14 traders. So if I had to guess, this is J.J.
 15 O'Keefe.
 16 Q Okay. And that's -- that's fine.
 17 MR. SCHMIDT: Who's the other
 18 possibility?
 19 THE WITNESS: Joe Sullivan works with
 20 him.
 21 MR. SCHMIDT: Oh, an associate of --
 22 THE WITNESS: Yeah.
 23 MR. SCHMIDT: -- Mr. O'Keefe?
 24 THE WITNESS: Yeah.
 25 MR. SCHMIDT: Okay.

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1 BY MR. BENSON:

2 Q And the comments from the pit trader,
3 is it fair to say they don't paint a pretty
4 picture?

5 A Sure. I mean, a couple important
6 things to take, as I read this, is it's -- it's
7 speculative about what might happen in the
8 future. And, second, I do know that Ms. Rios's
9 intent in getting these comments was to drive
10 home the point.

11 Q And the point was communicated to
12 Catalyst when it was -- when this presentation
13 was delivered to Mr. Szilagyi and others, right?

14 A Yes.

15 Q And do you recall Mr. Szilagyi
16 sharing -- ever telling you that he was going to
17 share this with the Mutual Fund Series Trust?

18 A No. He did not tell me that.

19 Q And do you know whether Mr. Szilagyi
20 thanked you and I said, you know, "I appreciate
21 this; I can now make sure that we have
22 appropriate disclosures to investors"?

23 A I certainly don't recall him saying
24 those words.

25 Q Okay. And you don't remember him,

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1 after receiving this November 2016 presentation,
2 asking you any questions about your opinion
3 about adequacy of disclosures about capacity,
4 right?

5 A No. He did not ask my opinion about
6 disclosures, no.

7 Q So Exhibit 34 reflects, you know,
8 these three capacity analyses in 2016, right?

9 A Yes.

10 Q You -- you thought about capacity for
11 many years, haven't you?

12 A Yes.

13 Q Okay. In fact, before the futures
14 fund was created and it was just the private
15 Harbor fund, you thought about capacity then
16 too, right?

17 A Yes.

18 Q And do you recall -- do you know what
19 RCM futures is?

20 A Is it R -- RCM --

21 Q Not RCM alternatives, if that helps.

22 A Yeah. That's right. So then I'm
23 not -- then I don't know what RCM futures is.

24 Q Okay. I will show you a document.

25 Have you ever -- do you ever remember

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1 answering or being asked to provide any
2 information for a website in which you answered
3 25 questions every investor should ask?

4 A I don't remember that.

5 Q Okay. All right. Well, we'll see if
6 this helps. So I'm marking this as SEC Exhibit
7 152.

8 (SEC Exhibit No. 152 was
9 marked for identification.)

10 BY MR. BENSON:

11 Q And this is a document that I had to
12 pull off the Wayback Machine, which I don't know
13 if you have been to that website, but it's this
14 great website where you can type in e-mails --
15 you can type in domain -- or e-mail -- or
16 website addresses, and it will tell you how --
17 what a -- what a -- what a website looked like
18 in a specific point in time.

19 MR. ZILIAK: I apologize. Is there an
20 exhibit number on this? I don't think it showed
21 up on our copy.

22 MR. BENSON: 152.

23 THE WITNESS: So my previous comment,
24 by the way, now that I look at this, I do
25 recognize the logo, and that is RCM. That's our

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1 introducing broker. So I know who they are.
2 (Reporter clarification.)

3 BY MR. BENSON:

4 Q Okay. And so tell me what you recall
5 about, you know, Exhibit 152. And that's
6 "purposely brought."

7 A Sure. I don't have any recollection
8 of doing this, to be honest.

9 Q Okay. You don't deny that you
10 answered questions and allowed this to be put up
11 on their website, though, do you?

12 A Sure. It's -- yeah. I'm certain they
13 didn't make it up.

14 Q Okay. And are you certain that you
15 were the source of the information that's
16 reflected here?

17 A Yes. I can't vouch for the final
18 format when it went out, but I suspect I
19 answered these questions.

20 Q Okay. And so how did it come about
21 that RCM futures reached out to -- reached out
22 to Ed Walczak? Were you one of their clients?

23 A Yes.

24 Q Okay. And is it your understanding
25 that this was an opportunity for them to

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1 highlight, you know, a successful relationship
 2 that they have with one of their clients?
 3 A Yes.
 4 Q Okay. And -- and you agreed to
 5 participate in answering the 25 questions that
 6 every investor should ask, right?
 7 A Yes.
 8 Q So yesterday we talked about the fact
 9 that, until 2015, you were a commodity trading
 10 advisor to separately managed accounts?
 11 A Yes.
 12 Q As well as another private fund -- or
 13 I'm sorry -- as well as the futures fund? I'm
 14 sorry.
 15 A Harbor fund, yes.
 16 Q Yes. Okay. Well, Harbor fund --
 17 A I'm sorry. Your time frame is
 18 correct, in futures fund in 2015.
 19 Q So 2015, there's two separately
 20 managed accounts?
 21 A Yes. Well --
 22 Q And --
 23 A -- many separately managed accounts.
 24 Q Okay. Oh, yeah, because you had
 25 almost a hundred clients, you think?

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1 A Right.
 2 Q Okay. So many separately managed
 3 accounts, and then there was the futures fund?
 4 A Yes.
 5 Q Okay. The many separately managed
 6 accounts that you were managing until 2015, is
 7 it true that they came under two rubrics of
 8 strategies?
 9 A Yes.
 10 Q The Voltage Balanced and the Voltage
 11 Aggressive?
 12 A Yes.
 13 Q And when you spoke with clients about
 14 the Voltage Balanced strategy, did you provide
 15 them with any offering documents or -- or
 16 materials that described the strategy?
 17 A I didn't generally speak with clients;
 18 but before they came into the program, they
 19 certainly had my PPM and subscription documents.
 20 Q Okay. So you had both the PPM and
 21 subscription of documents for the SMAs?
 22 A Yeah. I think they might have
 23 actually been, you know, all one document. I
 24 don't know. But there were two --
 25 Q Okay.

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1 A -- two documents there.
 2 Q And you -- you used those as recently
 3 as 2015, right?
 4 A I don't recall the last time I used
 5 them.
 6 Q Okay. Well, you stopped trading the
 7 SMAs in 2015, right?
 8 A I deregistered Harbor Financial in
 9 2015. I may have even stopped the accounts
 10 earlier than that. I don't recall exactly when.
 11 Q To the extent that you have the PPM or
 12 subscription documents for the Voltage Balanced
 13 or Voltage Aggressive SMA programs, we're
 14 requesting that.
 15 MR. ZILIAK: So which materials
 16 specifically for those, please?
 17 MR. BENSON: Essentially all the
 18 offering documents. So they -- we'll call it
 19 the PPM and subscription agreements.
 20 MR. ZILIAK: Okay. Thank you.
 21 MR. BENSON: To the extent there are
 22 marketing documents or tear sheets --
 23 MR. ZILIAK: Yep.
 24 MR. BENSON: -- we can talk about how
 25 deep we need to go on that.

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1 BY MR. BENSON:
 2 Q Okay. So against all of that, I
 3 wanted to draw your attention to Question 9 of
 4 Exhibit 152.
 5 And, again, this is under the header,
 6 "25 questions every investor should ask."
 7 And RCM futures identifies Question
 8 No. 9 as, "What is your program's capacity?"
 9 Do you recall answering that question?
 10 A Yes.
 11 Q Okay. And it says a hundred million
 12 dollars, right?
 13 A Yes.
 14 Q So how did you -- and I'll represent
 15 to you that, according to Wayback Machine, this
 16 manager's corner responses to "25 questions
 17 every investor should ask" appeared on the RCM
 18 futures website as of April 6th, 2014.
 19 So assuming that that is accurate --
 20 and your attorneys and I can have a discussion
 21 about that -- how did you conclude that the
 22 Harbor fund's capacity was a hundred million
 23 dollars?
 24 A I pulled a number out of the air.
 25 Q Okay. And that was okay to make a

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1 statement like that?

2 A I didn't see any reason why it wasn't.

3 Q Okay. Have you ever heard of a
4 requirement that, when you are making
5 representations to the investing public, you
6 need to have a reasonable basis?

7 A I haven't.

8 Q Okay. So you didn't have any
9 reasonable or principal basis for that hundred
10 million dollars?

11 A It was a pure guess and estimate.

12 Q Okay. Are you aware that you also --
13 when you managed the Harbor fund, you had
14 represented to the public that the capacity was
15 in the 500 million to \$700 million range?

16 A I don't recall.

17 Q Okay. So why answer this question if
18 you didn't know what the capacity was?

19 Why make up a number?

20 A Just to put a stake in the ground. It
21 was much larger than my program at the time. So
22 I felt like I didn't want to misrepresent to
23 investors that there was a limited capacity,
24 which has been done to encourage investors. So
25 I wanted to put a ceiling that I felt was

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1 reasonable, but I had no real basis to -- to
2 estimate that.

3 Q Right. Because actually, one of the
4 perverse things that can happen when a fund
5 announces that it's going to close or enter a
6 soft close -- one of two things can happen:
7 Either investors will flee or investors will
8 rush in before --

9 A Yes.

10 Q -- the gate is closed, right?

11 A Right.

12 Q And are you aware of that?

13 A Yes. We had those discussions with
14 regard to soft close and hedged futures.

15 Q Okay. So when you talked to Mr.
16 Szilagyi -- remember yesterday we looked at some
17 board minutes where you had presented to the
18 Mutual Fund Series Trust about the Harbor fund
19 and its conversion to a '40 Act fund?

20 Do you remember that?

21 A Yes.

22 Q Okay. That was May of 2013.

23 You had talked to Mr. Szilagyi before
24 you presented to the board, right?

25 A Yes.

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1 Q Makes sense. You're not just going to
2 go --

3 A Sure.

4 Q -- straight to the board.

5 Did you ever discuss with him the
6 Harbor fund's capacity limits?

7 A I don't recall, no.

8 Q Okay. He never asked you any
9 questions about that?

10 A I don't remember any.

11 Q You don't remember any. Okay.

12 Did you ask him whether -- did you
13 tell him about your perceived capacity limits?

14 A No, because, again, they were
15 estimates that were not -- not something I felt
16 were important at the time.

17 Q So is it your testimony that you were
18 not concerned about capacity at the time that
19 Harbor fund was a private fund?

20 A Correct.

21 Q Okay. At what point did you become
22 concerned about capacity then?

23 A I don't recall a specific moment in
24 time. We've -- I've testified and -- yesterday
25 and today about, as the fund grew, it seemed

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1 prudent and reasonable to consider that.

2 Q Okay. But you're unable to identify a
3 specific level of AUM at which point it became
4 prudent and reasonable to consider capacity,
5 right?

6 A That's correct.

7 MR. SCHMIDT: We are off the record at
8 12:03.

9 (A discussion was held off the
10 record.)

11 MR. SCHMIDT: We are back on the
12 record at 12:03.

13 BY MR. BENSON:

14 Q Just because I don't want to -- I
15 don't want to have to come back to Exhibit 152
16 again.

17 There's a statement you make -- so
18 we've talked about 2007 being a -- an important
19 year for the Harbor fund in terms of there was a
20 drawdown and you learned from that drawdown how
21 to look at risk differently, right?

22 A Yes.

23 Q Okay. And in Exhibit 152, you
24 actually discuss 2007. So in response to
25 Question 21, which asks, "Describe your worse

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1 drawdown to date. How did it happen, and what
2 action have been taken, if any, to prevent
3 similar drawdowns.?"

4 And the answer -- and I want to know
5 if you believe that this is your writing or the
6 substance came from you: "In 2007, we had a
7 peak to valley DD," which I believe is drawdown.

8 A Um-hum.

9 Q "In excess of 20 percent. We were
10 overleveraged, and our hedging techniques were
11 inadequate. Following that drawdown, we
12 conducted additional backtesting and optimized
13 our leverage at a reduced level. We also
14 developed greatly enhanced risk management
15 techniques both built into our trade structures
16 and more direct stop and adjust/exit rules. We
17 are pleased with how these new risk controls
18 performed during the volatile market conditions
19 from 2008 to the present."

20 Is that substance from you?

21 A It is.

22 Q Okay. And do you believe that
23 that's -- that those words were accurate as of
24 the time that you made them, which I believe was
25 in -- at least before 2014?

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1 A Yes.

2 Q Okay. And you believe that they are
3 accurate today?

4 A I no longer run these accounts that
5 this is referring to.

6 Q Okay. But I think you have testified
7 that the strategy -- I mean marketing materials
8 for the futures fund, they go back to 2005?

9 A Sure.

10 Q So I'm assuming that you're going to
11 have to agree that the fund has not materially
12 changed since 2005, right?

13 A Right. But these are the Voltage and
14 Balance programs, which were very different than
15 the futures fund.

16 Q Well --

17 A Well, they were different. I won't
18 say "very different," but they were different.

19 Q So is it your -- maybe I'm wrong.

20 Is it your -- didn't the Harbor fund
21 have a drawdown in excess of 20 percent in 2007?

22 A Yes.

23 Q Okay. Did you develop greatly
24 enhanced risk management techniques for the
25 Harbor fund in 20 --

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1 A Yes.

2 Q After --

3 A Yes.

4 Q -- in 2007?

5 And did you create more direct stop
6 and adjust exit rules for the Harbor fund?

7 A Yes.

8 Q What are those stop and adjust/exit
9 rules that you developed?

10 A Those are the risk matrix that we've
11 viewed prior.

12 Q Which specific risk metrics are the
13 direct -- well, what does direct stop and
14 adjust/exit rules -- what does that mean?

15 A That means putting an objective,
16 quantifiable trigger in place that requires
17 action. I think my testimony from yesterday
18 described the various ways in which you can
19 execute a stop loss.

20 Q Yes.

21 A You can do it with a mechanical order
22 with your broker?

23 Q Yes.

24 A You can do it with a trigger that is
25 internal, that alerts you to take some action,

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1 and you can do it -- and once you take action,
2 you can do that in a variety of ways which I
3 described previously.

4 Q Okay. Great. That's helpful.

5 And you would agree that those risk
6 metrics, they were mandatory? They weren't
7 discretionary, right?

8 A They were objective, and that required
9 at least the consideration of some action.

10 Q They were to be strictly followed?

11 A They were objective, and they required
12 recognition in some action.

13 Q Well, I think -- didn't -- didn't you
14 describe them as "strict"? Isn't that an
15 adjective that you have used?

16 A Yeah. It -- it says -- well, not --
17 not in this paragraph. I don't recall if strict
18 was somewhere else, but --

19 Q I guess my question is, have you ever
20 used the adjective "strict" to describe the
21 futures fund's risk measures?

22 A I don't know.

23 Q Okay. Have you ever described the
24 exit, slash, adjust rule as, "A hard rule"?

25 A I may have with the standpoint that

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1 "hard," to me means written down, quantifiable,
2 and objective, not subjective.

3 Q Right. Okay. In fact, if you look at
4 Exhibit 152 under question -- in response to
5 Question 15, you say -- and if -- if you
6 didn't -- if you write this, let me know.

7 "We trade options on the S&P 500
8 futures contract. We manage risk aggressively.
9 We build hedges into every trade. We monitor
10 total portfolio risks with advanced options
11 simulations software. We use control charting
12 of key risk factors with absolute adjustment
13 rules. We have an hard exit/adjust rule based
14 on total portfolio dollar exposure."

15 You wrote this, right?

16 A Yes.

17 Q Okay. So what did you mean, when you
18 wrote "We have a hard exit/adjust rule based on
19 total portfolio dollar exposure"?

20 A That -- that refers to the open option
21 premium metric in our risk framework.

22 25

23 BY MR. WASSERMAN:

24 Q But the open option premium metric
25 doesn't measure exposure, right?

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1 A I think it does.

2 Q Well, the open option premium metric
3 is a measurement of -- of the aggregate value of
4 the options in your portfolio, right?

5 A Yes.

6 Q What does that have to do with dollar
7 exposure?

8 A The open option premium -- and, again,
9 I -- I certainly may have gotten it wrong, but
10 that's what I meant in this statement.

11 Q What did you mean in this statement?

12 A My statement that says, "We have a
13 hard exit/adjust rule based on total portfolio
14 dollar exposure." My meaning was "hard," in the
15 sense of written down and quantified.
16 Adjust/exit rule means a trigger to suggest that
17 we evaluate and potentially perform one of the
18 adjustment or exit transactions I've testified
19 to previously.

20 And based on total portfolio dollar
21 exposure, my meaning was, what is the short
22 option premium in the portfolio because that
23 typically represents -- to me, again, in running
24 the strategy, that's an exposure measure.

25 BY MR. BENSON:

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1 Q So before we go back, because I don't
2 want have to revisit any documents, going back
3 to Exhibit 34, the three presentations about
4 capacity constraints.

5 A Yes.

6 Q They are dated May 2016 through
7 November 2016, right?

8 A Correct.

9 Q And we talked about how the purpose of
10 these documents, among others, was to apprise
11 Catalyst of a potential risk that they could
12 take whatever action they wanted to, correct?

13 A Correct.

14 Q During the period May 2016 through
15 November 2016, am I correct that you
16 participated in -- I believe they're called
17 "open house calls" or "weekly calls with
18 wholesalers"?

19 A I don't remember exactly when they
20 started, but that became a regular practice at
21 some point.

22 Q Okay. And do you have any belief that
23 they -- that they were not going on, at least --
24 if not weekly, at least monthly, during the
25 period May 2016 through November 2016?

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1 A Again, I honestly don't remember when
2 we started doing that.

3 Q Okay. And we can establish that, you
4 know, date range specifically.

5 But, more generally, do you remember
6 during those calls with wholesalers, ever
7 advising the wholesalers of this potential
8 capacity issue?

9 MR. WASSERMAN: But to clarify, the
10 "open house calls" aren't for wholesalers;
11 they're for advisors, right?

12 THE WITNESS: Both. But yes, advisors
13 are the intended audience. Sure.

14 BY MR. BENSON:

15 Q I'm sorry. Thank you. That's
16 important. So strike that line of questions.

17 You participated in open house calls
18 that were attended by both financial advisors
19 and internal and/or external wholesalers from
20 time to time, correct?

21 A Correct.

22 Q Do you -- do you have any knowledge as
23 to when you started participating in those open
24 house calls?

25 A No.

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1 Q We'll figure out the specific dates.
2 Do you recall ever raising the concept
3 of capacity issues, capacity constraints,
4 execution challenges, or FCM constraints, or any
5 issues related to those during these open house
6 calls?

7 A I don't recall specifically whether
8 those issues came up. But they may have, but I
9 don't recall specifics.

10 Q Okay. To prepare for those open house
11 calls, did you put together bullet points?

12 A No.

13 Q Did you come up with an agenda?

14 A No.

15 Q Was it something that you led, or did
16 you react to questions?

17 A Both.

18 Q Okay. Do you recall receiving any
19 questions about capacity?

20 A I've certainly gotten questions about
21 capacity in various venues. Whether it's on the
22 calls or whether it was in a one-on-one call
23 with an advisor, I've gotten questions.

24 Q And how did you respond to those
25 questions, if you recall?

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1 A Depending on the timing of the
2 question, I gave my best judgment at the time
3 about capacity. And -- and my typical response
4 was, we're fine now, we'll check at somewhat
5 arbitrarily levels.

6 When we hit a billion, we'll take the
7 temperature of the water. When we hit a billion
8 and a half, we'll take the temperature of the
9 water. That would be my typical response.

10 Q You saved me a lot of questioning
11 because I was going to ask you if you had a
12 typical response.

13 I have nothing further on that. But
14 I'd defer to my colleagues of the SEC and Sam
15 Wasserman of CFTC.

16 BY MR. SCHMIDT:

17 Q Just one question: You testified,
18 when we go through the presentations and e-mails
19 about capacities, that you were very open and
20 frank with Mr. Szilagyi about your concerns
21 about capacity, the potential risks that you
22 saw, right?

23 A Yes.

24 Q Okay. Would you characterize your
25 responses on the open house calls, when the

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1 issue of capacity came up, were just as open and
2 frank with the investment advisors as you were
3 with Mr. Szilagyi?

4 A With investment advisors, again, as --
5 as has been -- or, as I've testified, I don't
6 have the authority to makes decisions. So I'm
7 much more cautious about suggesting particular
8 actions.

9 So I tried to give more generic
10 answers on those calls to the best of my ability
11 without going into some of the level of detail
12 that I talked to Mr. Szilagyi about.

13 Q So your answers are more vague and
14 less detailed?

15 A Yes.

16 Q Okay.

17 BY MR. BENSON:

18 Q But you still believe them to be
19 factually accurate?

20 A Yes.

21 Q And you did not make those vague
22 and -- those vague statements in a way to --
23 with the intent to mislead, I assume?

24 A That's correct. I did not.

25 MR. SCHMIDT: Okay. We are off the

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1 record at 12:16 p.m.

2 (Whereupon, at 12:16 p.m., a luncheon
3 recess was taken.)

4 A F T E R N O O N S E S S I O N

5 BY MR. SCHMIDT:

6 Q Back on the record at 1:18 p.m.

7 Mr. Walczak, during the lunch break
8 and the incredibly short meeting break we had
9 before the lunch break, the staff of the SEC or
10 the CFTC did not have any substantive
11 discussions with you; is that correct?

12 A That's correct.

13 Q Okay. Right before we took a break,
14 we were talking about capacity issues. And in
15 particular, we discussed three capacity
16 PowerPoints; one in May, one in August, and one
17 in November of 2016, right?

18 A Yes.

19 Q And with regard to the third one in
20 November of 2016, you testified that it was your
21 belief that that got sent to Mr. Szilagyi in New
22 York. But without an e-mail or something like
23 that, you couldn't say for sure. Is that fair?

24 A That's correct.

25 Q Okay. So over the lunch break, I went

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1 and saw if I could find an e-mail. So I just
2 want to show you what's been marked as Exhibit
3 153.

4 (SEC Exhibit No. 153 was
5 marked for identification.)

6 BY MR. SCHMIDT:

7 Q And I just have the cover e-mail.

8 A Um-hum.

9 Q The presentation is an attachment,
10 which is part of the exhibit that your client
11 has.

12 MR. ZILIAK: I'm sorry. What is the
13 exhibit number, please? Okay. 153. Thank you.

14 BY MR. SCHMIDT:

15 Q So all I want to establish is that
16 this presentation, which is the one we talked
17 about in November of 2016, if you want to flip
18 to it, was sent by Ms. Rios to Mr. Szilagyi and
19 Mr. Amhrein who worked at Catalyst in New York.
20 And it looks like it was sent specifically in
21 reference to a call that you guys were going to
22 have on November 2nd, 2016; is that correct?

23 A That is correct.

24 Q Okay. The only other question is: Do
25 you remember anything about this call other than

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1 what you've already testified to this morning?

2 A No.

3 Q Okay.

4 BY MR. WASSERMAN:

5 Q Okay. Mr. Walczak, we're going to
6 mark as --

7 MR. BENSON: I'm handing you a
8 document that's been marked as SEC Exhibit 154.
9 (SEC Exhibit No. 154 was
10 marked for identification.)

11 BY MR. WASSERMAN:

12 Q And this is a slip sheet to a document
13 that was produced in native form.

14 It specifically -- actually it's not
15 the document.

16 It's an audio file that was produced
17 in native form.

18 The Bate stamp of this slip sheet is
19 Catalyst 00357978?

20 A I'm sorry. If I could ask, what does
21 that mean "produced in native format"?

22 Q It means in the form in which it
23 originally existed.

24 So, for example, you know, when Excel
25 sheets are produced, instead of being produced

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1 as images, they are produced as native Excel
2 spreadsheets that actually --

3 A Okay.

4 Q -- open a --

5 A All right.

6 Q In this case, it's an audio file. But
7 as a placeholder, we got a Bates stamp image
8 with the note as it reflects "produced in native
9 format."

10 A Okay.

11 Q Does that answer your question?

12 A Yes. Thank you.

13 Q The audio file, the native audio file,
14 as it's been produced to us, indicates that it
15 is the National Open House HFX/CFH call from
16 June 7th of 2016.

17 I'm going to play portions of that
18 call for you or one main portion of that call
19 for you.

20 But before I do, just to confirm,
21 you're familiar with these national open house
22 calls, correct?

23 A I am.

24 Q And the general format of the calls is
25 that somebody introduces you and Kim. You do a

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1 spiel about HFX. She does a spiel about CFH,
2 and then you take questions, right?

3 A Correct.

4 MR. BYLINA: Can you give me that date
5 one more time? I'm sorry.

6 A Sure. June 7th, 2016.

7 MR. BYLINA: Thank you.

8 MR. WASSERMAN: And to confirm, the
9 transcript is going to reflect the audio of the
10 call.

11 BY MR. WASSERMAN:

12 Q This is from the beginning.

13 (Audio played.)

14 "Welcome everyone. And thank you for
15 your attending our bi-monthly Catalyst funds
16 portfolio managers open house conference call."

17 BY MR. WASSERMAN:

18 Q Do you recognize that voice?

19 A I'm not sure.

20 Q Who typically is the MC, so to speak,
21 of these calls?

22 A There's been at least three.

23 Q Who are the three?

24 A One is Brian something. I don't know
25 these guys. So I don't know names.

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1 Q You just show up?
 2 A Absolutely.
 3 Q Okay. Fair enough.
 4 (Audio played.)
 5 "Before we begin, I'd like to remind
 6 everyone today's call may include
 7 forward-looking statements. These statements
 8 represent the firm's belief regarding future
 9 events that, by their nature, are uncertain and
 10 outside of the firm's control. The firm's
 11 actual results and financial condition, it may
 12 differ, possibly materially from what is
 13 indicated in those forward-looking statements."
 14 BY MR. WASSERMAN:
 15 Q Okay. And this is a normal preamble
 16 that he gives at the beginning of the calls,
 17 right?
 18 A Yes.
 19 Q Okay. I'm going to jump forward to
 20 Minute 22 in the call. And if you'll give me a
 21 moment just to make sure I get exactly there.
 22 (Audio played.)
 23 "It's star, then five, and put
 24 yourself in the cue.
 25 The last question revolves -- and this

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1 is from Axa Tima in New York.
 2 BY MR. WASSERMAN:
 3 Q This is the same voice at the
 4 beginning of the call, correct?
 5 A Sounds that way to me, yes.
 6 (Audio.)
 7 Q "To the -- it is surrounded around the
 8 stress testing and drawdown, and it goes as --
 9 as follows: What would be the, of course, worst
 10 case black-swan scenario for the fund? What is
 11 the max drawdown you are shooting for given your
 12 stress test, the risk parameters, and if you
 13 could speak a little bit more to if you see a
 14 significant drawdown when you're doing the
 15 stress test; if like, for example, there was a
 16 ten percent drawdown or move up in the market
 17 which caused the fund to fall out of your --
 18 your -- your four to six percent drawdown
 19 parameters, how do you -- how do you change the
 20 portfolio to mitigate that -- that potential
 21 risk in the fund?"
 22 "Yeah. Those are all great questions
 23 because as I" --
 24 BY MR. WASSERMAN:
 25 Q The voice just changed, correct?

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1 A Yes.
 2 Q And the voice now speaking, is that
 3 your voice?
 4 A It is.
 5 Q "Attention to forward management, in
 6 my mind is the key."
 7 I'm going to move it back ten seconds
 8 to the beginning of when you start speaking.
 9 MR. BENSON: For the record, it's 23
 10 minutes, 10 seconds in the file. 22:57 sorry.
 11 BY MR. WASSERMAN:
 12 Q I'm moving it back to 22:57.
 13 "To mitigate that -- that potential
 14 risk in the fund."
 15 "Yeah. Those are all great questions
 16 because, as I mentioned before risk management,
 17 in my mind, is the key to outperforming as a --
 18 as a portfolio manager as opposed to really
 19 chasing returns. Managing risk is the secret.
 20 So I'm anxious -- I'm always very happy to talk
 21 about that.
 22 So the first thing, pure and simple,
 23 is our -- our -- our metrics are dialed in to
 24 limit our drawdowns to eight percent. And
 25 there's no guarantees in the world especially in

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1 markets. But -- but that's our goal in
 2 everything we do, is keep our drawdown to eight
 3 percent, and since we established these metrics,
 4 they are basically -- in their current form,
 5 were established in mid-2007 after we had a
 6 drawdown. When the fund was in its private
 7 form, we had a large drawdown that I felt was
 8 unacceptable. And so did a lot of work on risk
 9 management at that point, and what factors
 10 contributed to the drawdown as a risk, and came
 11 up with the structure of stress testing that we
 12 use today. The goal being to limit a drawdown
 13 to eight percent."
 14 So far is everything that you've said
 15 on the call accurate?
 16 A Yes.
 17 Q "Subsequent to that time, we have been
 18 successful in doing that.
 19 I think our largest is actually a
 20 shade over eight percent but less than nine.
 21 And that actually occurred in 2014, in
 22 the fourth quarter.
 23 So that's our -- that's our metric.
 24 Our -- our methodology is to look at
 25 stresses on the portfolio.

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1 So we enter quick trades or
 2 (indiscernible) certain things. We enter call
 3 trades (indiscernible) certain things. We enter
 4 those trades in different expiration months,
 5 different stripes.
 6 We end up with a pretty complex
 7 portfolio of options position that are all
 8 entered for -- for many different reasons at
 9 different times. But they all comprise a fairly
 10 complex portfolio.
 11 So even if you're an options' guy, if
 12 you look at a portfolio statement, you have no
 13 chance whatsoever of understanding how that
 14 portfolio will behave under different market
 15 conditions unless you have very sophisticated
 16 options modeling software which, of course, we
 17 do."
 18 Q Same question: So far everything that
 19 you're stating on the call has been accurate?
 20 A Yes.
 21 Q "So in that software, we have our
 22 portfolio built, and we can then take stresses
 23 and say "what if," and do lots of what ifs. And
 24 we do it graphically; meaning, instead of sort
 25 of throwing darts at a wall and saying, what if

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1 the S&P goes to 2150 next week and we figure
 2 that out, and what then if it goes to 1900 at
 3 the end of the month, we do it graphically so we
 4 can see an overview; meaning, we look at a
 5 graph, and all along the bottom of that graph,
 6 is the price of the S&P, and along with the
 7 vertical axis, value of the portfolio.
 8 So we can see a curve that says, here
 9 is what -- how the portfolio is going to behave
 10 as the market moves back and forth in price."
 11 Q What's the software that you're
 12 referring to?
 13 A Excuse me. OptionVue.
 14 Q So far, are the statements that you
 15 made on the recording accurate?
 16 A Yes.
 17 Q "Now, for us in options, we have two
 18 other very important variables to consider. One
 19 is called volatility, and one is
 20 (indiscernible).
 21 And neither of those are factors
 22 that -- for example, you're looking at an equity
 23 portfolio. But for us, it's very important.
 24 So as we look at that graph, we
 25 actually see -- in a base case, we see five

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1 different lines on that graph of the port --
 2 what the portfolio value will look.
 3 And those five lines are five
 4 different points in time.
 5 So we can now see what happens if the
 6 S&P goes up 25 tomorrow, if it's up 25 points at
 7 the end of the month; if it's up 60 points three
 8 weeks from now.
 9 So -- and, again, without having to
 10 consider so much data that you can't manage it,
 11 we can see it graphically in terms of the curves
 12 at different points in time."
 13 Q Same question: Everything so far --
 14 all the statements you have made so far are
 15 accurate?
 16 A Yes, they are.
 17 Q And I ask for your patience. We are
 18 going to go through about another minute or so
 19 of this.
 20 "And then we'll, of course, enter
 21 the -- the most important variable in option
 22 pricing, and that is volatility.
 23 So it's actually less important about
 24 where the price of the S&P is than where
 25 volatility or -- even in the simplest form, is

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1 the VIX.
 2 So, fortunately, within our option
 3 software, not only does the software
 4 automatically anticipate, based on past
 5 behavior, what will happen to volatility -- in
 6 other words, the -- the software knows that, if
 7 the market is down ten percent, volatility is
 8 going to be higher. And it uses historical data
 9 to project how much higher it will be. And
 10 that's reflected in the portfolio value of these
 11 options that we look at.
 12 And, similarly, to the upside, we know
 13 that volatility is likely to be plump it
 14 (phonetic).
 15 So the model is very sophisticated.
 16 It lets us look at the portfolio values under a
 17 wide variety of scenarios, and does it
 18 continuously so we don't have to pick random
 19 points.
 20 However, we do pick stress points
 21 and -- and what we -- we look at is a plus or
 22 minus five and ten percent price excursion and
 23 also a minus 15 percent excursion because we all
 24 know that downside moves can be larger and more
 25 rapid, generally speaking, than upside moves.

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1 So we look at all these stress points
 2 on those curves across time for places in which
 3 the portfolio values would cause us an
 4 unacceptable drawdown.
 5 And so when we identify that there's
 6 an unacceptable risk against our eight percent
 7 parameter, we now use those same -- that same
 8 modeling software to figure out what to do about
 9 it."
 10 Q Have all the statements made by you
 11 that we just listened to -- sorry.
 12 Are all the statements made by you
 13 that we just listened to accurate?
 14 A Yes, they are.
 15 Q I have nothing further on that right
 16 now.
 17 MR. SCHMIDT: Just one clarification.
 18 When he said VIX, it's capital V-I-X, correct?
 19 THE WITNESS: (Nodding head.)
 20 MR. ZILIAK: For the transcript?
 21 THE WITNESS: (No verbal response.)
 22 MR. SCHMIDT: Okay.
 23 BY MR. SCHMIDT:
 24 Q Mr. Walczak, I think we mentioned a
 25 couple times today and yesterday that there -- I

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1 guess we've -- we've discussed things sort of
 2 leading up to December of 2016, correct?
 3 A Yes.
 4 Q So I want to start talking about
 5 December 2016, just to place, in your mind,
 6 where we're talking now.
 7 A Okay.
 8 Q Okay. So I want to show you an e-mail
 9 that you got from Ms. Rios in -- on December
 10 8th, 2016.
 11 Did you remember receiving this
 12 e-mail?
 13 A No.
 14 Q Okay. What does this e-mail tell you?
 15 A I don't know. It refers to a link. I
 16 don't know what -- what indicator she is talking
 17 about.
 18 Q Do you have any reason to believe you
 19 didn't receive this e-mail from Ms. Rios?
 20 A No.
 21 Q Okay. Has she ever sent you an e-mail
 22 that is similar in that market indicators
 23 indicate that something bad is on the horizon?
 24 A She, from time to time, has sent me a
 25 variety of technical analyses. That's what she

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1 does very well.
 2 Q Okay. Is this one of those?
 3 A Is this one of what?
 4 Q One of her e-mails of all or a portion
 5 of her technical analyses of what's going on at
 6 that particular time?
 7 A Sure. This would be an example of
 8 one.
 9 Q Okay. So she sends it to you. What
 10 would you do with this information?
 11 A I would probably click on the link to
 12 see what she's talking about.
 13 Q Okay. Did you?
 14 A I don't remember.
 15 Q Did you talk to her about it?
 16 A I don't remember that either.
 17 Q Did you take any action based on it?
 18 A I don't -- I don't know.
 19 Q You don't know one way or the other?
 20 A Right.
 21 BY MR. BENSON:
 22 Q Do you know where you physically were
 23 located on the planet Earth on December 8th,
 24 2016?
 25 A I don't recall. On that specific

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1 date, I don't recall.
 2 BY MR. SCHMIDT:
 3 Q Do you -- are you often in Wisconsin
 4 in December?
 5 A Sometimes.
 6 Q Where else could you be?
 7 A Either San Francisco or occasionally
 8 Hawaii.
 9 Q Do you have homes in both -- or
 10 property in both places?
 11 A Yes.
 12 Q Okay. Generally much warmer in San
 13 Francisco and Hawaii than it is in Wisconsin in
 14 December?
 15 A That's correct.
 16 Q Okay. Let me show you -- this is an
 17 e-mail. It's marked as SEC No. 32.
 18 (SEC Exhibit No. 32 was
 19 marked for identification.)
 20 BY MR. SCHMIDT:
 21 Q Now, the top e-mail is between Mr.
 22 Szilagyi and Ms. Rios. It's dated December 9th,
 23 correct?
 24 A Yes.
 25 Q But if you go one e-mail down, you're

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1 a recipient of an e-mail earlier in the day on
 2 December 9th, 2016, correct?
 3 A Yes.
 4 Q From Mr. Szilagyi?
 5 A Yes.
 6 Q Okay. Did you get this e-mail?
 7 A I don't recall specifically. I don't
 8 see a reason why I wouldn't have.
 9 Q Okay. Can you flip to the second
 10 page?
 11 So the context of this is Mr. Szilagyi
 12 is forwarding an e-mail from somebody he knows
 13 in the industry and he's known a while, correct?
 14 A I think that that's what he said here.
 15 Yes.
 16 Q So he sends it to you. And this is --
 17 so have you reviewed this on, what's on page --
 18 the second page of this e-mail?
 19 A Okay. I've read it.
 20 Q Okay. Do you remember this?
 21 A I think I do, yes.
 22 Q Okay. Did you talk to Mr. Szilagyi or
 23 Ms. Rios about it?
 24 A That I don't remember.
 25 Q Why would Mr. Szilagyi send this to

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1 you? Do you know?
 2 A Well, he said FYI, so I guess he
 3 thought it was something I'd be interested in.
 4 I mean, again, I don't recall specifically. But
 5 the body of his e-mail, to me, seems to suggest
 6 it's an interesting fact as opposed to anything
 7 more urgent.
 8 Q Well, it specifically makes reference
 9 to one of the concerns that you raised long ago,
 10 at this point, which was there's a potential
 11 risk that somebody's size, right, their volume
 12 in the market or in the pit, could allow others
 13 to take advantage of that size, right, and raise
 14 prices on them? Isn't that the concern that you
 15 detailed earlier, one of the potential risks?
 16 A Sure.
 17 Q Right? So what this is saying is,
 18 market makers have them on the ropes and know
 19 the size, right?
 20 A Right.
 21 Q That's essentially the concern that
 22 you were alluding to before? I'm not saying
 23 that this refers to you --
 24 A Right.
 25 Q -- and the futures fund. But that is

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1 the same concern, right?
 2 A Yes.
 3 Q Okay. Then if you go to the first
 4 page, it's an e-mail between Mr. Szilagyi and
 5 Ms. Rios, right?
 6 And Ms. Rios says, "At four billion,
 7 we can't exactly hide the size. Just think what
 8 five billion would look like. J.J. tells us
 9 that the vultures are circling."
 10 So J.J. is your guy in the pit in
 11 Chicago, correct?
 12 A Yes.
 13 Q Do you know of any comment by J.J.
 14 that is either "The vultures are circling" or
 15 words to that effect?
 16 A I don't recall that comments. Clearly
 17 I talk to him pretty much every day. And I
 18 don't recall any conversation where he made a
 19 comment like that.
 20 Q No comment about market makers are
 21 taking advantage of somebody they know his size,
 22 they got him on the ropes, nothing like that?
 23 A I don't remember that, no.
 24 Q Okay. If J.J. remembers that
 25 conversation and said he had it with you, do you

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1 have any reason to believe that he's not telling
 2 the truth?
 3 A No.
 4 Q Okay. You just can't remember one way
 5 or another whether it occurred?
 6 A Exactly.
 7 Q Okay.
 8 BY MR. BENSON:
 9 Q So given your lack of memory, if
 10 Mr. -- if Mr. O'Keefe had a belief that he told
 11 you that, it would be reasonable believe -- to
 12 believe that his memory is correct?
 13 A Oh, I wouldn't say that. I have no
 14 reason to believe he would make it up.
 15 Q Okay.
 16 A But he, like I, might not remember
 17 exactly what occurred.
 18 Q Okay. If you will look at Exhibit 32,
 19 just one quick question.
 20 Do you see the second to the last
 21 sentence on Page 2 of this exhibit? It says,
 22 "Easy to get stuff on, very hard to get out."
 23 Do you see that?
 24 A Yes.
 25 Q Earlier today you had talked about how

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1 you perceived execution risk arising from the
 2 size of the futures fund as relating to the
 3 entry or putting on of trades, correct?
 4 A Correct.
 5 Q Do you believe that the execution risk
 6 arising from the size of the futures fund also
 7 related to exiting positions?
 8 A It -- it certainly may apply to any
 9 transactions. At the time I was only
 10 considering entries.
 11 Q Right. And that's what I was trying
 12 to figure out.
 13 What would be the mechanical
 14 difference between putting on a trade or getting
 15 out of a trade because, in both circumstances,
 16 isn't it a bilateral transaction?
 17 A Sure.
 18 Q So could you think of a distinction or
 19 could you articulate a distinction for me today
 20 where you could tell me why the execution risk
 21 would differ between putting a trade on and
 22 putting a trade off, given that they are both
 23 bilateral transactions?
 24 A The difference would be the structure
 25 of the trade. Typically our adjustment and exit

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1 trades are different than our entry trades.
 2 Q And can you articulate that with
 3 further detail?
 4 A Sure. Entry trades are typically a
 5 buy one, sell three; buy one, sell two trade.
 6 Adjustment trades might be buy one, sell one.
 7 Might be buy one exclusively. Might be buy two,
 8 sell one, any variety.
 9 But entry trades are much more
 10 consistent in their structure.
 11 Q So you, in that -- in that example,
 12 you provided an entry trade and an adjustment
 13 trade, but you didn't provide me an exit trade.
 14 So do you have exit trades?
 15 A I did provide an exit trade "buy one
 16 back, buy two back."
 17 Q Okay.
 18 A Simply buying calls.
 19 Q So the --
 20 A And to further respond to your
 21 question --
 22 Q Yeah.
 23 A -- the significant difference in those
 24 transactions is, when you put on a one, buy
 25 three, you have four contracts in place. When

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1 you exit, you may only have one or two. It's a
 2 much smaller trade transaction, less complex.
 3 Q And isn't it true -- and I might be
 4 wrong. Isn't it true that while your -- while
 5 you're correct that a one, buy three would have
 6 four contracts, you wouldn't necessarily have to
 7 put on all four contracts at the same time,
 8 right?
 9 A But that's what we do.
 10 Q Always?
 11 A Always.
 12 Q Okay. And you -- when you're exiting
 13 a trade, you would not exit all four at the same
 14 time?
 15 A We might. But it's more much common
 16 to exit one of the "legs," as the terminology
 17 goes.
 18 MR. BENSON: Okay.
 19 BY MR. SCHMIDT:
 20 Q Ms. Rios writes to Mr. Szilagyi that,
 21 "At 4 billion, we can't exactly hide the size."
 22 Do you see that?
 23 A I do.
 24 Q Okay. Do you agree with her?
 25 A I'm not sure specifically what she

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1 meant by "hide the size."
 2 So it's -- it's hard for me to express
 3 an opinion on that one.
 4 Q Okay. So the context of this e-mail
 5 is Mr. Szilagyi sending -- forwarding the
 6 comment by somebody he knows in the industry,
 7 that -- regarding some trader or fund, "The
 8 market makers have them on the ropes and know
 9 his size."
 10 Okay. So in that context, whether or
 11 not similarly the futures fund can hide their
 12 size at 4 billion, so the market makers don't
 13 get them on the ropes and take them advantage of
 14 them, did you with the statement or not?
 15 A Again, I'm not -- I'm honestly not
 16 sure exactly what she meant by that, other than,
 17 in the context of this e-mail, at \$4 billion,
 18 market makers may, in fact, know that we trade
 19 in thousands of contracts.
 20 So I guess, if that's what she meant,
 21 then I can't disagree with it.
 22 Q You don't disagree with that?
 23 A No.
 24 MR. SCHMIDT: Okay.
 25 BY MR. WASSERMAN:

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1 Q And to be clear, it was your testimony
 2 before that J.J. told you that -- at some point,
 3 that the traders were aware of your positions,
 4 right?
 5 A We had discussions about whether or
 6 not they were, and -- you know, they were
 7 general discussions over long periods of time.
 8 And so we discussed about, well, can they tell
 9 from open interest? Do they know because J.J.
 10 is doing it? So we had those conversations.
 11 And I wanted to satisfy myself about
 12 exactly how they impacted execution.
 13 And so the consensus was there were
 14 certainly times when other traders understood
 15 that it was a large fund trading and they could
 16 check open interest like anybody else and
 17 suspect that we might be that trader.
 18 But the conclusion certainly, in my
 19 mind, was that there wasn't an impact or
 20 consistent impact on our execution.
 21 Q I'm not asking you to address the
 22 execution issue.
 23 I'm simply asking you to confirm what
 24 I think you testified earlier, which was, at
 25 various points, J.J. relayed to you his

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1 impression that the traders in the pit knew your
 2 positions?
 3 A That they knew -- again, I -- I would
 4 disagree, and I don't think J.J. ever told me
 5 that the traders know our positions.
 6 Would they know that we were the
 7 trader and that positions at certain strikes
 8 might be ours or certainly a large trader?
 9 That's possible because they are paying
 10 attention.
 11 But could a trader in the pit
 12 accurately write down on a pad of paper the
 13 hedged futures strategy fund portfolio? I don't
 14 believe so.
 15 Q But they generally understood what
 16 your strategy was, right?
 17 A Yes. After repeatedly doing one by
 18 threes, they -- right.
 19 Q Right. And do you recall whether they
 20 had that impression -- I'm sorry.
 21 Do you recall whether they had that
 22 understanding before December 9th, 2016?
 23 A Again, I don't know for sure what
 24 impression they had.
 25 In our discussions, it's certainly

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1 plausible that they had some sense for our
 2 positions. But this is not something I thought
 3 about on a daily basis to say, before December,
 4 yep, those traders knew where we were. I
 5 honestly don't know.
 6 BY MR. SCHMIDT:
 7 Q In your answer, does it at all depend
 8 on a distinction between traders knowing that
 9 the futures fund is taking certain positions or
 10 traders knowing that some anonymous fund of a
 11 large size is taking certain positions?
 12 A In my mind, that should not make a
 13 difference.
 14 Q It doesn't in mine either. I'm just
 15 wondering --
 16 A Right.
 17 Q -- if your answers depend on that.
 18 A No.
 19 Q They don't. Okay.
 20 And you said you're executing one by
 21 threes always at the same time, thousands of
 22 contracts, correct?
 23 A Yes.
 24 Q Do you know any other participants in
 25 the Chicago pit who executed thousands of one by

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1 threes all at the same time?
 2 A Well, if you mean all at the same
 3 time, what I meant to say is we do all legs of
 4 that spread at the same time.
 5 We don't often go in and do thousands
 6 of contracts.
 7 Our trade size has been a thousand for
 8 some period of time. Sometimes we do that once
 9 a day; sometimes more times a day.
 10 So the short answer to your question
 11 is other options traders do, perhaps not the
 12 same spread, but they do volume of that size. I
 13 am aware of that.
 14 Q So -- but the question is, one by
 15 threes, where all legs are executed at the same
 16 time through the same broker, do other -- are
 17 you aware of other market disciplines that
 18 engage in that pattern of trading?
 19 A No. I'm not aware of any.
 20 Q Okay. Has J.J. ever told you that are
 21 there other market participants that engage that
 22 same pattern of trading?
 23 A Yes.
 24 Q He has?
 25 A He has.

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1 Q Who?

2 A Again, he talks about a generic class
3 of trader because it's not appropriate to talk
4 about specific names.

5 In other words, no one should be
6 broadcasting to the world that hedged futures is
7 doing the trade.

8 So what he's mentioned to me is that
9 banks often do the actual opposite side of the
10 trade and -- and there's been opportunities for
11 us to take the other side of their trade instead
12 of going through our normal market makers.

13 So he's certainly mentioned that --
14 that there are oftentimes banks that do the
15 reverse side of our trade.

16 Q That's interesting.

17 So as somebody who regularly is in
18 that market, he can determine what certain other
19 market participants are doing, correct?

20 A He sees the trade as the same as any
21 other trade, and sometimes we're actually on the
22 opposite side of the same trade.

23 Q Okay. That's helpful. I'll show you
24 what's been marked as Exhibit 39.

25 (SEC Exhibit No. 39 was

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1 marked for identification.)

2 BY MR. SCHMIDT:

3 Q This is an e-mail dated December 9th,
4 2016, from Ms. Rios to you. Do you remember
5 getting this?

6 A Again, I don't specifically remember,
7 but there's -- I'm certain that I did.

8 Q Okay. So Ms. Rios suggests -- she
9 says -- in fact, the only part of the e-mail is
10 the subject line, right, really that has any
11 substance to it?

12 A Yes. That's correct. Sorry.

13 Q She says, "I'm seeing one by twos
14 replacing one by three in the future," correct?

15 A Yes.

16 Q Okay. Do you remember her suggesting
17 replacing one by threes with one by twos?

18 A We had many discussions about the
19 structure of our trades. And a fundamental part
20 of that structure is a choice of one by two
21 versus one by three.

22 During the life of the fund, there was
23 a time when -- and somewhat volatility
24 dependent, we -- I did one by twos.

25 Did some research that suggested one

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1 by threes had a better risk return profile.

2 And we were contemplating going back
3 to one by twos.

4 So this was a common element of
5 discussion between the two of us.

6 Q Would replacing one by threes with one
7 by twos be a way to reduce risk?

8 A It can be, but it depends on how the
9 trade is structured; how many -- what's the
10 distance between strikes, how far away from the
11 market it is.

12 So it's one element of the trade that
13 may or may not reduce risk depending on how you
14 structure the overall trade.

15 Q Did you have the skill and experience
16 as of December 2016 to structure a one by two in
17 a way that would reduce risk?

18 A Certainly.

19 Q Okay. I'm not concerned or asking
20 about discussions you've had with Ms. Rios over
21 the life of the fund.

22 Did you have any discussions with Ms.
23 Rios in December of 2016 about replacing one by
24 threes with one by twos?

25 A I don't recall specifically if we did.

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1 As I mentioned, there were many discussions
2 about many elements of the strategy. So that
3 specific, I don't recall.

4 Q You don't know one way or the other?

5 A I don't know one way or the other.

6 MR. SCHMIDT: Okay.

7 BY MR. WASSERMAN:

8 Q When you put on your position -- when
9 you put on your call ratio spreads, you try to
10 make them cash neutral, right?

11 A Yes.

12 Q In other words, that the revenue from
13 selling the call short is roughly equal to the
14 cost of buying the calls long?

15 A That's correct.

16 Q Sorry. That's a little redundant, but
17 you get my point.

18 So is the decision about whether to do
19 a one-by-two ratio or a one-by-three ratio
20 driven at all by whether -- by the price of the
21 short call?

22 A By the relative price of the short
23 call. In other words, is it possible to
24 construct a trade that has the same or better
25 return profile, risk return profile, using a one

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1 by two as opposed to a one by three?

2 Q So, in other words, if you can't
3 generate the -- the revenue to be cash neutral
4 with the one by two, you could go to a one by
5 three to generate the equal revenue?

6 A Well, it's not as simple that because
7 you can always generate enough revenue depending
8 on where you place the strikes.

9 So it's a question of are you actually
10 taking on more risk doing a one by two as
11 opposed to one by three, depending on how you
12 place the strikes and where you place that
13 option structure, the spread, relative to the
14 market.

15 Q Okay. And options are generally more
16 accepted the closer they are to being in the
17 money, right?

18 A All else being equal, yes.

19 Q And so for a -- sorry. Give me a
20 second.

21 So let's say you wanted the spread
22 between your strikes to be 50 points. But doing
23 a one by two at a 50-point spread wouldn't be
24 cash neutral. It would actually cost you more --
25 cost you more to buy -- to take the long

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1 position than to sell the short position? Let's
2 say that's the hypothetical.

3 A Depending on where you put it.

4 Q I'm saying let's -- let's -- let's
5 assume that for a 50-point difference in the
6 strikes that you were going to be cash-flow
7 negative on a one by two.

8 A Okay.

9 Q In order to be cash-flow neutral, you
10 would have to -- you would have to make the
11 spread narrower, right?

12 A Or closer to the market or farther out
13 in expiration.

14 Q Thanks.

15 So if you didn't want to move farther
16 out into expiration and you didn't want to move
17 closer to market and you didn't want to make the
18 spread narrower, you would have to do a one by
19 three to generate the same revenue?

20 A Correct.

21 MR. SCHMIDT: Let me show you what's
22 been marked as Exhibit 44.

23 (SEC Exhibit No. 44 was
24 marked for identification.)

25 BY MR. BENSON:

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1 Q Actually before we go to Exhibit 44,
2 I'm handing you SEC Exhibit 40.

3 (SEC Exhibit No. 40 was
4 marked for identification.)

5 BY MR. BENSON:

6 Q So we looked a few minutes ago at
7 Exhibit 39, which is an e-mail from Ms. Rios to
8 you, Mr. Walczak, right?

9 Mr. Walczak?

10 A Yes.

11 Q Before -- before you read Exhibit
12 40 --

13 A I'm sorry.

14 Q -- we had just asked you some
15 questions about an exhibit marked Exhibit 39
16 from Kimberly Rios to you with a subject line,
17 "I'm seeing one by twos replacing one by threes
18 in the future," right?

19 A Yes.

20 Q Okay. Are you aware that Ms. Rios
21 sent you Exhibit 39 while she was on a
22 conference call with Catalyst -- representatives
23 of Catalyst Capital Advisors based in New York
24 City?

25 A No, I'm not.

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1 Q Are you aware that a telephone call
2 took place between Ms. Rios and individuals at
3 Catalyst Capital Advisors in New York regarding
4 futures fund's risk analysis and stress testing
5 procedures on December 9th, 2016?

6 A I recall a number of -- excuse me -- a
7 number of risk-related phone calls about that
8 time during that December drawdown we had.

9 Q And you didn't participate in all
10 those calls, did you?

11 A I believe I did.

12 Q Okay. Did you participate in -- in
13 the one on December 2016?

14 A I don't recall.

15 Q Well, let's look at Exhibit 40 and see
16 if we can get some clarity on that perhaps.

17 So Exhibit 40 is a string of two
18 e-mails. The first is sent from Michael
19 Schoonover, which I believe we spelled it
20 S-c-h-o-o-n-o-v-e-r, to Kimberly Rios, copying
21 George Amrhein, Jerry Szilagyi, and David Miller
22 with the subject "Risk analysis/understanding of
23 stress testing."

24 That was Friday, December 9th, 2016,
25 at 3:52 p.m.

<p style="text-align: right;">Page 550</p> <p>1 You're not on that e-mail, right?</p> <p>2 A I see that.</p> <p>3 Q Okay. And in that e-mail, Mr.</p> <p>4 Schoonover says, "Hi, Kimberly. Thanks for time</p> <p>5 on the call today. We spoke after the call</p> <p>6 about trying to propose something. Are you able</p> <p>7 to send us some screen shots, slash, raw data,</p> <p>8 slash, explanation of anything you used to</p> <p>9 stress test, slash, measure the risk.</p> <p>10 I think the biggest thing we can do to</p> <p>11 make sure that the strategy risk and business</p> <p>12 risk are properly aligned is to make sure we</p> <p>13 understand how the fund measures risks and</p> <p>14 reacts to adverse events."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Okay. Do you recall participating on</p> <p>18 the call that Mr. Schoonover references in his</p> <p>19 e-mail to Ms. Rios as reflected in Exhibit 40?</p> <p>20 A Again, I recall a number of calls in</p> <p>21 that time frame, and I participated, to the best</p> <p>22 of my knowledge, on most of them.</p> <p>23 Q Okay.</p> <p>24 A Again, if -- if there was a call that</p> <p>25 was held without my knowledge, I wasn't invited</p>	<p style="text-align: right;">Page 552</p> <p>1 organizational charts. And I did not make it a</p> <p>2 point to stay up with different</p> <p>3 responsibilities.</p> <p>4 Q Okay.</p> <p>5 A That said, Mr. Amhrein was my point of</p> <p>6 contact for risk control.</p> <p>7 Q Okay. And so looking at this e-mail</p> <p>8 from Mr. Schoonover to Ms. Rios, is it -- do you</p> <p>9 think it's peculiar or odd that Mr. Schoonover</p> <p>10 is e-mailing Ms. Rios to -- with the sentence,</p> <p>11 "I think the biggest thing we can do to make</p> <p>12 sure the strategy risk and business risk are</p> <p>13 properly aligned is to make sure we understand</p> <p>14 how the fund measures risks and reacts to</p> <p>15 adverse events"?</p> <p>16 Isn't it peculiar that he's sending</p> <p>17 that to a portfolio manager as opposed to, let's</p> <p>18 say, someone responsible for monitoring the risk</p> <p>19 of that fund?</p> <p>20 A I'm -- I'm going to guess here. I'll</p> <p>21 say two things. One is I have no idea what</p> <p>22 conversation on the phone call may have</p> <p>23 precipitated this e-mail or discussion.</p> <p>24 Q Okay.</p> <p>25 A So first and foremost, I don't really</p>
<p style="text-align: right;">Page 551</p> <p>1 to, I can't say anything about that.</p> <p>2 Q So what was George Amhrein's position</p> <p>3 at Catalyst as of Friday, December 9th, 2016?</p> <p>4 Do you remember?</p> <p>5 A He was -- I think he was called a risk</p> <p>6 advisor.</p> <p>7 Q Maybe chief risk officer?</p> <p>8 A I don't know if he was given that</p> <p>9 exact title.</p> <p>10 Q Okay. He was -- was he the person at</p> <p>11 Catalyst Capital Advisors who was responsible</p> <p>12 for monitoring risk of the futures funds?</p> <p>13 A Yes.</p> <p>14 Q No one else, right?</p> <p>15 A I don't know whether anyone assisted</p> <p>16 him.</p> <p>17 In fact, I think probably Mike</p> <p>18 Schoonover may have.</p> <p>19 So he may have had some other people</p> <p>20 assisting him, but he was the point of contact.</p> <p>21 Q Okay. And in terms of having the</p> <p>22 official -- official responsibility, it was Mr.</p> <p>23 Amhrein who had that responsibility?</p> <p>24 A I think that's correct, although I</p> <p>25 will tell you that Catalyst is not good with</p>	<p style="text-align: right;">Page 553</p> <p>1 know what he's talking about.</p> <p>2 Q Okay. And anything besides first and</p> <p>3 foremost?</p> <p>4 A My best understanding of this would be</p> <p>5 he's asking to understand how, at the portfolio</p> <p>6 level, we view and manage risk.</p> <p>7 Q Okay. And Kimberly, in response to</p> <p>8 that request, she forwards -- she forwards the</p> <p>9 e-mail to you, right?</p> <p>10 A (Nodding head.)</p> <p>11 Q And that's reflected also in Exhibit</p> <p>12 40. And she forwards it to you on Friday,</p> <p>13 December 9th, 2016, at 4:56 p.m.</p> <p>14 "Ed, see below. How in depth do you</p> <p>15 want to get with things, (charts, OptionVue, et</p> <p>16 cetera), with NY or just have us come up with</p> <p>17 adjustments for them to review."</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Do you remember receiving that e-mail?</p> <p>21 A Not specifically. But --</p> <p>22 Q Do you remember if you responded to</p> <p>23 this e-mail?</p> <p>24 A That I definitely don't know.</p> <p>25 Q Do you remember having a conversation</p>

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1 in response to receiving this e-mail?

2 A No.

3 Q You don't remember telling Kim, Don't
4 worry about this. We've got a risk officer.
5 Have him deal with it, right?

6 A As I said, in this time frame and
7 almost any time frame, to be honest with you, I
8 don't remember specific conversations.

9 Q But it would have -- I mean, I'm -- am
10 I right that you are sure you did not say, Kim,
11 don't spend your time on this, that's George
12 Amhrein's job; have him do it?

13 A Again, I don't remember what
14 conversation I may have had.

15 Q Okay. And I'm just saying generally,
16 did you ever tell Kim, Look, any risk questions
17 that come to you, kick them over to George
18 Amhrein. You got better things to do?

19 A I don't recall ever giving her that
20 instruction.

21 Q Do you recall ever pointing questions
22 about risk to -- to George Amhrein?

23 A I don't recall specifically, but there
24 may have been occasions.

25 Q Okay. And George Amhrein, his -- his

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1 experience, professional experience, would you
2 categorize it as being primarily risk related?

3 A I'm not familiar with his professional
4 experience.

5 Q Do you know how George Amhrein was
6 compensated from 2013 to 2015 by Catalyst
7 Capital Advisors?

8 A I'm not aware of his compensation
9 plan, no.

10 Q Did you know that it was based on
11 assets versus management in that fund?

12 A There was a point in time where very
13 causally Mr. Szilagyi mentioned to me that
14 George receives or received a finder's fee for
15 introducing or identifying me to Catalyst.

16 Q Right.

17 A I don't know the specifics of what
18 that fee was, how it was calculated, how long it
19 went or what his other compensation was.

20 Q So did -- you understood that Mr.
21 Amhrein received a finder's fee, but you didn't
22 understand -- if I hear you correctly -- that
23 that finder's fee actually was directly related
24 to how fast and how large the futures fund grew?

25 A Right. As I said, I don't know

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1 anything other than Jerry mentioned to me -- Mr.

2 Szilagyi mentioned to me at some point that

3 George received compensation for introducing us.

4 Q So sitting here today, assuming that

5 I'm correct that Mr. Amhrein was paid based on

6 how fast and how large the futures fund grew

7 while he also served as the fund's primarily

8 risk officer, do you see an issue with that?

9 A Not -- not knowing the details of his
10 compensation, I can't tell you -- and not only
11 that, I can't get inside of his head to tell you
12 whether or not he'd be impacted by that.

13 Q Okay. And I wasn't -- that's fine.

14 I guess one other question: Do you
15 have travel records when you go to your other
16 properties?

17 You fly, I assume. You don't take a
18 boat?

19 A That's correct.

20 Q Okay. So I assume you have -- are you
21 a member of -- do you -- are you member of like
22 United Mileage Plus or frequent flyer mileage?

23 A Sure. A number of different airlines.

24 Sure.

25 Q So there would be ways, if we asked

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1 for you to, you know, give us dates when you
2 were in location A or location B, right?

3 A Yes.

4 Q Okay. We'll follow up with you
5 separately on that.

6 But sitting here today, you don't
7 recall where you physically were located during
8 the month of December 2016, right?

9 A Certainly part of that time, I was in
10 Hawaii.

11 Q Right.

12 A I don't remember exactly when.

13 Q And what's the time difference between
14 Hawaii and Madison, Wisconsin?

15 A Certain times of the year, it is four
16 hours; certain times of the year, it is five
17 hours.

18 Q Okay. And we talked about how futures
19 contracts can be traded in the pits in Chicago
20 and then electronically, right?

21 A Yes.

22 Q And the majority of the futures
23 contracts of the futures fund traded were S&P
24 contracts, right?

25 A Correct. We don't trade futures

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1 contracts routinely, though.
 2 Q I'm sorry. Options on futures?
 3 A Correct.
 4 Q What are the hours of the options on
 5 futures contracts? What are the hours of those
 6 markets?
 7 A 8:30 central to 3:15.
 8 Q Central, right?
 9 A Central, yes.
 10 Q Okay. So I'm bad with math. You're
 11 probably much better at it than I am.
 12 Sitting in Hawaii, what is the -- what
 13 is that time period?
 14 A 4:30 to 11:15.
 15 Q Okay. So was it your practice, when
 16 you were physically in Hawaii, to be awake and
 17 working from, I believe you said, 4:30 in the
 18 morning until 11:30 in the morning?
 19 A Yes.
 20 Q So was that your practice?
 21 A Yes, it was.
 22 MR. BENSON: Okay.
 23 BY MR. SCHMIDT:
 24 Q Did I give you a copy of Exhibit 44?
 25 MR. ZILIAK: 44.

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1 THE WITNESS: 44?
 2 1 BY MR. SCHMIDT:
 3 Q Yeah.
 4 A I have it.
 5 MR. SCHMIDT: Did I send it down?
 6 MR. BENSON: No.
 7 BY MR. SCHMIDT:
 8 Q Okay. These are or this is -- Exhibit
 9 44 is one of the risk reports, daily risk
 10 reports that you've testified about before,
 11 right? Not this specific one, but this is one
 12 of those documents?
 13 A Yes.
 14 Q Okay. And this particular one is the
 15 daily risk report that was received the morning
 16 of December 9, 2016, correct?
 17 A Yes.
 18 Q Okay. And two of your risk factors
 19 have been triggered, right?
 20 A Yes.
 21 Q Okay. Can you tell me which two have
 22 been triggered?
 23 A It looks like the open call premium
 24 and the change in NAV or share over a week's
 25 period of time.

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1 Q For the open option premium value for
 2 calls, that is triggered at six percent or
 3 greater, right?
 4 A Correct.
 5 Q And as of the morning of December 9th,
 6 the value you got was 7.21 percent, correct?
 7 A Correct.
 8 Q And so once that value -- or sorry.
 9 Once that risk parameter is triggered,
 10 the PM, which is you, right? You're the
 11 portfolio manager? You got to --
 12 A Yes.
 13 Q I'm sorry. It has to be audible for
 14 her to record it.
 15 A Yes.
 16 Q You have to reduce this ratio within
 17 24 hours, correct?
 18 A That's the suggested action on there
 19 unless the risk committee agrees otherwise, yes.
 20 Q Okay. Can you go to the top of the
 21 column. Does it say action suggested or action
 22 required?
 23 A It says action required.
 24 Q Does it mean action required?
 25 A In practice, all of these triggers

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1 caused us to have a discussion about what's best
 2 to do next.
 3 Q So even though it says "PM," the
 4 action required is that PM reduces ratio within
 5 24 hours, it doesn't mean that the PM, meaning
 6 you, is required to reduce the ratio within 24
 7 hours?
 8 A In practice, we had a -- we typically
 9 have a discussion at the risk committee level to
 10 do that, to decide what to do.
 11 Q That -- that's not my question.
 12 So my question is: This is a list of
 13 written risk parameters, correct?
 14 A Yes.
 15 Q And it says -- it has an entire column
 16 dedicated to action required, correct?
 17 A Yes.
 18 Q The column does not say action that we
 19 are required to have a discussion about to
 20 figure out whether we want to do it, right?
 21 A Right.
 22 Q It says action required. And the
 23 action that's required for open opposition
 24 premium value calls is that the PM reduces the
 25 ratio within 24 hours, correct?

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1 A Yes.

2 Q It does not say the PM thinks about
3 whether to reduce the ratio within 24 hours?

4 A Correct.

5 Q Correct?

6 A Correct.

7 Q Okay. But your testimony is, despite
8 what it actually says, that's not what you
9 actually did?

10 A I don't recall what we did without
11 looking at the next day's report. It's very
12 possible we did reduce it.

13 Q But that's not my question.

14 What you just told me was your
15 practice is not to treat this as required. Your
16 practice is to look at it, to think about it, to
17 have a discussion, and then decide what to do,
18 correct?

19 A That's the way the risk parameters are
20 treated, such that if there was a needed-to-be
21 discussion, a course of action, then we would do
22 that.

23 In some cases, we would simply correct
24 it.

25 Q But you don't have to?

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1 A Well, we have to -- I would have to
2 unless I got approval from somebody not to, I
3 guess is my point.

4 Q Okay. So that's different. Okay.

5 So these risk parameters mean you have
6 to reduce it unless somebody tells you not to;
7 is that what your saying?

8 A That's -- that's my understanding.
9 Not that they tell me not to -- or only if I
10 make a case that there's a reason not to
11 immediately take action.

12 These -- we've always, I think,
13 articulated these as risk triggers, meaning,
14 they trigger some kind of action. Not
15 necessarily exactly what it says if the
16 circumstances require something different.

17 Q Are you aware of materials describing
18 the futures fund that describes its risk
19 parameters as strict?

20 A Without something in front of me, I
21 don't know.

22 Q You don't know?

23 Mr. Szilagyi is one of your main
24 contacts at Catalyst, correct?

25 A Yes.

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1 Q And Mr. Amhrein is the risk officer
2 that you deal with at Catalyst regarding the
3 futures fund?

4 A Yes.

5 Q So can you please tell me the
6 conversations you've had with them where you
7 explain to them that the risk triggers don't
8 actually trigger required action; they just
9 trigger discussion about what to do?

10 A All I'm describing is the practice of
11 what occurred is typically when a risk trigger
12 was hit, without time passing, there would
13 typically be a discussion about why it was hit
14 to ensure that -- that we were taking the right
15 course of action.

16 Q I understand what the practice is.

17 I want to know about the discussions
18 that you've had with people at Catalyst, whether
19 it's Mr. Szilagyi, Mr. Amhrein or somebody else,
20 where you told them that, when a risk trigger is
21 hit, I don't immediately take the action that's
22 on the report. It simply triggers a discussion
23 about what steps need to be taken.

24 So what discussions have you had with
25 people at Catalyst about your practice in

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1 response to a risk trigger parameter being
2 triggered?

3 A I -- I don't recall specific
4 discussions. I'm just telling you what the
5 practice was during the period of this drawdown.
6 We had a lot of phone calls to identify the
7 right steps to take.

8 MR. ZILIAK: May I just say one thing
9 please?

10 The column headers are off by one
11 column. If you look at the top, "reported by,"
12 is not no. Elevation is -- these are -- your
13 columns are one off. Elevation is COE notified.
14 Action required is no, no, no, no, no all the
15 way down. No. Corrective action of the PM is
16 offset in all the rest of this. The columns
17 tops are one out of sync. So all these
18 things --

19 MR. BENSON: If you want to make an
20 objection to the document, that's absolutely
21 fine. I think that we can probably fix the
22 record if you have a problem with the document
23 by going through each column and confirming with
24 your client that the headers actually do line
25 up. It's an easy solution. If you'd like us to

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1 do that, I'd be happy to do.
 2 MR. ZILIAK: I just feel that being --
 3 the document is being misrepresented here.
 4 (Reporter clarification.)
 5 MR. ZILIAK: The document -- the
 6 document. That is, the description here of pick
 7 any one of them. You're talking about open
 8 call, open option premium.
 9 So PM reduces ratio for 24 hours.
 10 To my understanding that really
 11 belongs under corrective action, not under
 12 action required, because the action required
 13 language goes to the yes or no.
 14 BY MR. SCHMIDT:
 15 Q Well, but -- part of the problem is
 16 the way it's formatted and it was produced.
 17 But you can look -- this -- we showed
 18 you this yesterday. This is Exhibit 41.
 19 A Okay.
 20 Q Okay?
 21 Did you change the columns on the
 22 daily risk report?
 23 A So you're telling me -- and I am
 24 sorry. I should have looked more carefully
 25 while you asked your questions.

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1 So you're telling me that the column
 2 that says PM reduces ratio in 24 hours is not
 3 labeled action required?
 4 Q That is not what I'm saying.
 5 A I thought that's how you asked the
 6 question.
 7 Q This is Exhibit 41, right? You talked
 8 about it yesterday. You testified at length,
 9 right?
 10 A Can I see it again?
 11 MR. BENSON: If you look in the --
 12 THE WITNESS: Yes.
 13 MR. BENSON: -- first page of the
 14 document that's actually in front of you.
 15 THE WITNESS: Yes.
 16 MR. BENSON: Look at the real
 17 exhibit -- sorry -- in front of you.
 18 THE WITNESS: Which one?
 19 MR. BENSON: Please hand -- the
 20 document that's in your hand, please hand it
 21 back to Jake.
 22 THE WITNESS: Okay.
 23 MR. BENSON: The document is in front
 24 of you. Please turn over, and you'll see
 25 there's a sticker on it.

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1 THE WITNESS: Yes.
 2 MR. BENSON: It says "division
 3 exhibit," right?
 4 THE WITNESS: Yes.
 5 MR. BENSON: And what's the number?
 6 THE WITNESS: 44.
 7 MR. BENSON: Okay. So now you can
 8 look at the headings.
 9 BY MR. SCHMIDT:
 10 Q Okay. So do you see where there's a
 11 column that requires a PM to do certain things?
 12 A There's a column --
 13 MR. ZILIAK: Objection. I mean --
 14 MR. SCHMIDT: Zach, please, can you
 15 let me get my question out?
 16 Okay. I understand what you're
 17 saying. It's a formatting issue.
 18 MR. ZILIAK: It's more than a
 19 formatting issue.
 20 MR. SCHMIDT: How do you know?
 21 MR. BENSON: Let's figure this out
 22 because -- let's figure it out.
 23 MR. ZILIAK: All right. Okay. Please
 24 proceed. I'm sorry.
 25 BY MR. SCHMIDT:

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1 Q Okay. Do you see a column on Exhibit
 2 44, right? That is entitled "action required"
 3 at the top?
 4 A I do see that column. And I'll
 5 recognize it to be shifted so that that is not
 6 the proper title for that column.
 7 Q Okay. So do you think the proper
 8 title is corrective action?
 9 A Yes.
 10 Q And that's the action that is be taken
 11 to correct the risk parameter trigger, right?
 12 A Well, as we -- it is a suggested
 13 action. If we shift these columns over, I'm
 14 noticing also that the action required column
 15 says no.
 16 Q And you testified yesterday that that
 17 is an error, a known error, that when the risk
 18 parameters are triggered, that doesn't always
 19 shift from no to yes. That's something that
 20 you're aware of and that you don't actually look
 21 at that column. You look at the metric to see
 22 whether or not it is above or below the risk
 23 parameter.
 24 Is that your testimony under oath from
 25 yesterday? Do you remember?

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1 A Yes, I -- that's the -- I do compare
 2 the actual value to the risk metric without
 3 being concerned over whether that column says
 4 yes or no in it.
 5 Q And what it's actually supposed to do
 6 is, any time the risk metric is triggered, it's
 7 supposed to flip from no to yes. That's what
 8 you testified yesterday under oath, if you
 9 remember.
 10 A All right. If I did, I did.
 11 Q Do you have a different understanding
 12 sitting here today than you did yesterday?
 13 A No.
 14 Q Okay.
 15 MR. BENSON: So you agree with what
 16 Mr. Schmidt just said?
 17 THE WITNESS: Say it again.
 18 MR. ZILIAK: Sorry. I'm sorry.
 19 MR. BENSON: So you agree with what
 20 Mr. Schmidt just say, that it should have
 21 switched?
 22 BY MR. SCHMIDT:
 23 Q If a risk parameter is triggered, the
 24 no should switch to yes, absent some error in
 25 the --

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1 A I think that's correct, yes.
 2 Q Okay. These are your risk parameters,
 3 right?
 4 A They are.
 5 Q Okay.
 6 A Not my report.
 7 Q Okay. But you created these risk
 8 parameters? I didn't create them.
 9 A That's correct.
 10 Q Okay. So I am not asking you whether
 11 you agree with my risk parameters. I'm asking
 12 you what your risk parameters, that you've
 13 designed, are supposed to do. Okay?
 14 A Right.
 15 Q And your answer, I think, is I believe
 16 so. So you don't know?
 17 A I'm sorry. I've lost your question.
 18 Q Sure.
 19 I asked, if a risk parameter is
 20 triggered is this column "action required,"
 21 supposed to flip from no to yes. And your
 22 answer is I believe so.
 23 A Yes.
 24 Q And I'm just asking whether you know
 25 for sure or you don't know for sure?

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1 A I believe that's the design of the
 2 report, that it should flip to yes.
 3 Q But you don't know?
 4 A I don't know. I'm not the programmer.
 5 Q Okay. So given that state of affairs,
 6 tell me about -- let's just start with the risk
 7 officer, Mr. Amhrein.
 8 Tell me about the discussion --
 9 because Mr. Amhrein receives these daily risk
 10 reports, correct?
 11 A Correct.
 12 Q Okay. So tell me about the
 13 discussions you've had with Mr. Amhrein that,
 14 when a risk parameter is triggered, it doesn't
 15 mean that the PM takes the corrective action
 16 that's listed in the risk report.
 17 A So all I recall is a series of
 18 meetings related to this drawdown where we
 19 agreed, as a business, to get together and talk
 20 about specific correction -- corrective actions.
 21 Q Okay. So I understand that. And
 22 we'll get to that. That's not my question.
 23 A Okay.
 24 Q Not in response to this drawdown.
 25 I want to know that -- what you told

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1 Mr. Amhrein when he starts receiving these
 2 reports because they are before the drawdown,
 3 correct?
 4 A I don't recall when the drawdown was
 5 other than it was, I believe, in this period of
 6 time in December.
 7 Q Okay. Are you -- is it your
 8 understanding that this report first was
 9 received -- this kind of daily report was first
 10 received when the December drawdown happened?
 11 A No. The risk triggers occurred during
 12 the December drawdown.
 13 Q And that's not what I'm asking.
 14 Okay. Long before, months before the
 15 December drawdown at least --
 16 A Yes.
 17 Q -- these risk reports were coming to
 18 you, Mr. Amhrein, and Ms. Rios, correct?
 19 A Yes.
 20 Q On a daily basis?
 21 A Yes.
 22 Q Okay. So during that period of time,
 23 all right, tell me the discussions you had with
 24 Mr. Amhrein that, if any of these risk
 25 parameters are triggered, I, the PM, am not

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1 actually taking the action that is set forth in
 2 this risk report.
 3 You should know that.
 4 A I had -- I had no such discussions.
 5 Q No such -- with Mr. Amhrein?
 6 A Correct.
 7 Q Okay. Tell me all such discussions
 8 you had with Mr. Szilagyi.
 9 A None.
 10 Q Okay. Tell me all such discussions
 11 you had with anyone at Catalyst.
 12 A None.
 13 Q Okay. Okay. You mentioned in -- I
 14 think in context of this December 9 on-or-about
 15 time period that there was a risk committee that
 16 was formed. Did I hear that correctly?
 17 A Yes.
 18 Q Okay. Do you know when that risk
 19 committee was formed?
 20 A I don't.
 21 Q Do you know why the risk committee was
 22 formed?
 23 A I don't know specifically. I didn't
 24 do it.
 25 Q Do you know if it was formed in

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1 response to the drawdown that occurred in
 2 December 2016?
 3 A That would be my best guess.
 4 Q Is it then your best guess that the
 5 committee did not exist before the December 2016
 6 drawdown?
 7 A That I do not know.
 8 Q As far as you know?
 9 A As far as I know, I don't -- I don't
 10 remember the first time this group was brought
 11 together, and I don't know if they had met
 12 previously without me.
 13 Q Okay. So let's limit it to your
 14 knowledge and involvement of the group.
 15 I realize that, if the group existed
 16 and never told you about it or never involved
 17 you in it, you would know about it.
 18 A Right.
 19 Q Okay. So let's -- that possibility
 20 we're just going to put to the side, whether it
 21 preexisted in some form unbeknownst to you and
 22 without your participation.
 23 A Okay.
 24 Q As far as you know, was the first
 25 meeting or the first creation of this group in

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1 reaction to the December 2016 drawdown?
 2 A Yes.
 3 Q Okay. Who was in the group?
 4 A Participants I recall: George
 5 Amhrein, Jerry Szilagyi, Mike Schoonover, David
 6 Miller.
 7 Those are the New York representatives
 8 that I can recall.
 9 And myself and Ms. Rios were typically
 10 invited to the discussions at least relative to
 11 our funds.
 12 Q Okay. And I -- I called it a group.
 13 I think you referred to it as a risk committee.
 14 A The current incarnation of a similar
 15 group is called a risk committee currently.
 16 Q Do you know if it was called a risk
 17 committee back in December 2016?
 18 A I don't -- I don't know.
 19 Q You don't know how it was referred to?
 20 It could have been. It might have been
 21 something else?
 22 A Right.
 23 Q Okay. And who told you about --
 24 well -- can I just call it the risk committee,
 25 realizing it might have been called something

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1 else in December of 2016, so we have a point of
 2 reference?
 3 A Sure.
 4 Q Okay. Who told you about the risk
 5 committee?
 6 A Again, no one told me about a risk
 7 committee other than to invite me to participate
 8 in the discussion.
 9 Q Who invited you to participate in the
 10 discussion?
 11 A I think it was probably Mr. Szilagyi.
 12 Q Okay. And was this a situation where
 13 you and Ms. Rios are participating remotely and
 14 the rest of the people are in New York?
 15 A Yes.
 16 Q Okay. So you didn't all meet in one
 17 location?
 18 A Correct.
 19 Q Okay. What do you remember about that
 20 first meeting, which is a teleconference from
 21 your perspective?
 22 A I don't remember specifics, other than
 23 we had a discussion about -- in the context of
 24 the drawdown of the fund, we had discussion
 25 about what actions to take.

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1 Q Okay. So it definitely occurred after
2 the December drawdown, December 2016 drawdown,
3 because you referenced it in the discussion and
4 you're figuring out options?

5 A Yes.

6 Q Okay. Sorry. Possibilities?

7 A Yes.

8 Q Okay. What are the possibilities that
9 are discussed?

10 A Again, I don't remember a lot of
11 specifics. I remember presenting some different
12 alternatives, although I can't be very sure of
13 exactly what those were at the time. But there
14 was a lot of discussion around what to do with
15 positions in the fund, whether or not to hedge
16 positions, how -- what options or what
17 alternatives there were to hedge risk, take off
18 risk.

19 Q Okay. So the drawdown had started?

20 A Yes.

21 Q And the concern was: What is the risk
22 going forward? Is there a way to reduce it? Is
23 that fair?

24 A Sure. Yes.

25 Q Okay. Any other concerns expressed at

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1 the meeting?

2 A I don't remember any others.

3 Q And what was the -- do you remember
4 anything that Mr. Miller said?

5 A Again, multiple phone calls. I can
6 maybe recall specific -- or I mean snippets of
7 his commentary from one phone call or another.
8 I can't refer to a specific meeting.

9 Q Okay. Tell me what you remember as
10 his input.

11 A His input was primarily that we needed
12 to potentially introduce a delta-based risk
13 metric into the matrix.

14 Again, I don't -- I don't know exactly
15 when that came in, but that's -- that's how he
16 viewed options. So he was interested in -- in
17 using that kind of exposure metric.

18 Q Okay. Anything else? Any other input
19 by Mr. Miller?

20 A I remember his general concern over --
21 over risk, but I don't remember specifics.

22 Q What was his general concern over
23 risk?

24 A The same as everyone else in the room
25 really, that we were in the middle of a

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1 reasonably severe drawdown.

2 Q And what about Mr. Amhrein? What did
3 he contribute to the conversation?

4 A I don't recall specifically.

5 Q Do you recall anything that he
6 contributed during this time period?

7 A I don't recall specifically what his
8 comments were in the meeting.

9 Q So you do remember the delta-based
10 metrics suggested by Mr. Miller but nothing by
11 Mr. Amhrein?

12 A Correct.

13 Q Okay. And what about Mr. Schoonover?
14 What did he contribute to this discussion?

15 A I only recall that he provided a lot
16 of analytical support, meaning, he volunteered
17 to run different scenarios to calculate --
18 potentially begin to calculate a delta metric to
19 do some -- some other background research.

20 Q Okay. Other than being the guy that
21 can execute the analysis, did he offer any
22 ideas?

23 A Again, I don't remember specifics. He
24 very well may have, but I don't remember his
25 specific contribution.

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1 Q Nothing that sticks out, in your mind,
2 at all?

3 A No.

4 Q Okay. What about Mr. Szilagyi?

5 A Again, I don't remember specifics
6 other than he -- he -- I would say he ran the
7 meeting in that he moderated the meeting, he
8 provided his perspective on the business and his
9 opinion on some of the comments that others
10 made. That's what I recall.

11 Q In general, what was Mr. Szilagyi's
12 perspective and opinion at that time?

13 A I don't remember the specifics of it.

14 Q So nothing that he added sticks out in
15 your memory?

16 A No.

17 Q What about Ms. Rios?

18 A Nothing comes to mind.

19 Q What about your contribution to the
20 risk committee?

21 A I recall suggesting alternatives and
22 trying to describe the pros and cons of
23 different alternative adjustments.

24 Q What were the alternatives that you
25 suggested?

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1 A I simply tried to get the group to
 2 understand the techniques that we always use. I
 3 think I have described some in previous
 4 testimony. Buying back options, rolling options
 5 forward, hedging options with other options.
 6 Q Anything else other than those three?
 7 A I don't recall anything else other
 8 than those three. But there may very well have
 9 been.
 10 BY
 11 MR. MORAN:
 12 Q So prior to December 16, with Mr.
 13 Miller suggesting it, were you monitoring the
 14 fund's deltas?
 15 A No.
 16 Q You were not?
 17 A And, again, I don't know -- you
 18 mentioned December '16. I think we got --
 19 Q December of '16.
 20 A December of '16.
 21 Q 2016. Sorry.
 22 A Sometime in there, I think the subject
 23 of delta exposure was brought up.
 24 MR. ZILIAK: By the way, I don't want
 25 to ruin your flow, but we are at 2:30. I don't

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1 know if you're reaching an end at some point.
 2 MR. SCHMIDT: Did you guys have things
 3 on these particular documents?
 4 Okay. Can we go off the record?
 5 (Reporter clarification.)
 6 MR. SCHMIDT: 2:32.
 7 (A brief recess was taken.)
 8 BY MR. SCHMIDT:
 9 Q Okay. We are back on at 2:49 p.m.
 10 Mr. Walczak, same question: No
 11 substantive discussions with the staff of the
 12 SEC or the CFTC during the break?
 13 A No.
 14 Q Correct?
 15 A Correct.
 16 Q Okay. So I have a couple of documents
 17 to show you. This has been marked as Exhibit
 18 46.
 19 (SEC Exhibit No. 46 was
 20 marked for identification.)
 21 MR. ZILIAK: Thank you.
 22 BY MR. SCHMIDT:
 23 Q This is an e-mail from Ms. Rios to you
 24 dated December 10th, 2016. Do you see that?
 25 A Yes.

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1 Q Okay. So it says that, "Paul called
 2 and said the phone call today is to discuss how
 3 to take risk off."
 4 Paul is your introducing broker?
 5 A Yes.
 6 Q Any other Paul that that could refer
 7 to?
 8 A Not that I can think of, no.
 9 Q Okay. Do you remember this phone call
 10 to discuss how to take off risk?
 11 A Again, lots of phone calls during that
 12 period of time. So this specific one --
 13 Q Yeah. So part of what I'm doing is
 14 showing you documents that relate to a specific
 15 phone call to see if it triggers your memory.
 16 A Sure.
 17 Q And your response is it does not?
 18 A It doesn't other than to confirm my
 19 recollection that there were a lot of phone
 20 calls.
 21 Q Okay. Ms. Rios tells you in this
 22 e-mail that a one percent upmarket move is
 23 equivalent to a five percent decline in NAV. Do
 24 you see that?
 25 A Yes.

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1 Q Did you have a reaction to that?
 2 A I don't recall.
 3 Q Okay. Is that something that you'd be
 4 concerned about?
 5 A Yes.
 6 Q Okay. Do you know what she's looking
 7 at to make that determination?
 8 A I'm not sure.
 9 Q Okay. And --
 10 MR. BENSON: What tools would she have
 11 available to her in Madison, Wisconsin, that
 12 would allow her to come to the conclusion that a
 13 one percent upmarket move is going to a five
 14 percent decline in NAV?
 15 THE WITNESS: She might be looking at
 16 OptionVue.
 17 MR. BENSON: Are you aware of any
 18 other things that she could be looking at that
 19 could provide that information.
 20 THE WITNESS: She might do a manual
 21 calculation of the portfolio.
 22 BY MR. SCHMIDT:
 23 Q Do you remember around this time
 24 discussing that possibility with people at
 25 Catalyst in New York?

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1 Again, "that possibility," meaning a
 2 one percent upmarket move result in a -- or is
 3 equivalent to a five percent decline in NAV of
 4 the futures fund?
 5 A I believe numbers like that, if we
 6 were able to confirm, were discussed on some of
 7 these phone calls.
 8 Q Okay. So that concept was talked
 9 about between Wisconsin and New York in this
 10 time frame?
 11 A I think so.
 12 Q So Exhibit 44, if you still have it in
 13 front of you, was the risk report, the daily
 14 risk report, dated Friday, December 9, right?
 15 A Yes.
 16 Q Okay. So the next daily risk report
 17 is Monday the 12th, correct?
 18 A Yes.
 19 Q They didn't come on the weekends?
 20 A No.
 21 Q Okay. And on Exhibit 44, the open
 22 option call premium had advanced past the
 23 trigger of six percent, right?
 24 A Yes.
 25 Q Okay. So I'm showing you what's been

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1 marked as 48.
 2 (SEC Exhibit No. 48 was
 3 marked for identification.)
 4 BY MR. SCHMIDT:
 5 Q Okay. So the way, again, this was
 6 produced and printed to format is a little
 7 different.
 8 But this is the risk report for --
 9 that was received on Monday, December 12th at
 10 7:30 a.m. in the morning from Manamu Solutions?
 11 A Yes.
 12 Q And that's where you got these risk
 13 reports from?
 14 A Yes, Model Alpha.
 15 Q Okay. So if you go down the left side
 16 at the bottom. Okay? And you can see there's a
 17 point a little more than halfway down in that
 18 large text box that says, "Risk open option
 19 premium value calls," on the first page.
 20 A Yes.
 21 Q Okay. So if you go across that line,
 22 the next thing it says is, "Less than six
 23 percent" -- sorry. "Less than six percent NAV
 24 net calls."
 25 A Yes.

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1 Q And then the number is 8.9 percent,
 2 right?
 3 A Yes.
 4 Q Okay. So within the next trading day,
 5 that value had not been reduced, correct?
 6 A The value went up probably due to a
 7 market movement because I'm fairly certain I
 8 took some action on that Friday.
 9 Q Regardless of the action that you may
 10 have taken, the ratio was not reduced, correct?
 11 A The ratios was likely reduced and then
 12 subsequent market day was increased again.
 13 Q Do you know that for sure?
 14 A I don't know that for sure, but I know
 15 that's happened in the past when we react and
 16 adjust risk lower.
 17 Q And how would you be able to determine
 18 whether or not your statement is true?
 19 I'm sorry. I didn't mean to say
 20 "true." Accurate.
 21 A Sure. I guess we'd have to go back
 22 and look at trades on that day.
 23 Q So you could do that; you could look
 24 at the trades and determine whether or not you
 25 had reduced the open option premium call ratio

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1 to less than six percent and then a market
 2 movement subsequently caused it to go up again?
 3 A Well, we could certainly see if call
 4 exposure had been reduced.
 5 I don't know if we can calculate
 6 intraday that number.
 7 (Reporter clarification.)
 8 BY MR. SCHMIDT:
 9 Q Model Alpha; are those terms
 10 synonymous this your mind?
 11 A Yes. I guess one is the company and
 12 one is the name of the software.
 13 Q Okay.
 14 BY MR. WASSERMAN: And to clarify,
 15 Model Alpha is the name of software and Manamu
 16 is the name of the company?
 17 THE WITNESS: I think so.
 18 BY MR. BENSON:
 19 Q Mr. Walczak, you mentioned that, with
 20 regard to Exhibit 44 and Exhibit 48, you believe
 21 that it's possible that you took steps to bring
 22 the open option premium value of calls to below
 23 less than six percent NAV at some point on
 24 Friday 12-9 but by the close of trading on 12-9,
 25 it had gone above that six percent threshold

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1 again, right?

2 A That's happened in the past so it's a
3 possibility certainly.

4 Q Okay. So my understanding of the
5 procedure, the risk procedure that was in place,
6 it was that the PM was to reduce that ratio
7 within 24 hours. Okay?

8 A Yeah. The action -- and I'm sorry if
9 I wasn't clear earlier, but the action required
10 under there was certainly to elevate -- one of
11 the suggestion -- suggested actions was
12 certainly to reduce it. The action required
13 simply said we have to do something and the
14 elevation to the risk officer in this case
15 was -- was typically what would be accomplished
16 for sure.

17 You're correct in that no should flip
18 to a yes in terms of action required, but that
19 corrective action is not the only one that can
20 be considered.

21 Q Okay. So I guess my question is: Is
22 it -- in your view, would you have complied with
23 that policy or procedure if you intraday brought
24 the ratio to below six percent even though, by
25 the end of the day, it had risen above that six

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1 percent threshold again?

2 A That is -- that is typically how we
3 calculate our end-of-day basis.

4 Q So you would have looked to end of day
5 to determine whether you had achieved the goal
6 of reducing the open interest percentage then,
7 right?

8 A Yes. If -- if that was the sole
9 corrective action that I was going to take,
10 which was just to bring it back somehow --

11 Q Um-hum.

12 A -- I would make my best effort to do
13 that; and if the market rose, it's very possible
14 that it would go back up again.

15 Q And in that instance, you would not
16 have actually achieved the corrective action
17 that you intended, which was to have the open
18 call interest to be below six percent at the end
19 of trading of the subsequent day?

20 A Correct.

21 MR. BENSON: Thank you.

22 BY MR. SCHMIDT:

23 Q There's another risk parameter that is
24 triggered which is the change in NAV, eight
25 percent in one month. That's at -- near the top

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1 of the second page. Do you see that of, No. 48?

2 A Yes.

3 Q Okay. And the five percent in one
4 week is also still triggered, correct?

5 A Yes.

6 Q Okay. And the -- to the far right of
7 both of those, it says "PM written explanation."

8 Do you see that?

9 A Yes.

10 Q Okay. Did you provide a written
11 explanation to anyone about why those two risk
12 parameters got triggered?

13 A I did not. But, again, my very recent
14 testimony about the intent of this document is
15 that action must be taken, we must elevate and
16 make sure that the appropriate person is aware.

17 So in this case, we had verbal
18 communication and explanation of what was going
19 on instead of written.

20 Q Okay. So the answer is no?

21 A The answer to?

22 Q Did you provide a written explanation,
23 the answer is no, right?

24 A My answer is no.

25 Q Okay. So let's look at Exhibit 49.

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1 (SEC Exhibit No. 49 was
2 marked for identification.)

3 BY MR. SCHMIDT:

4 Q This is a risk report for the very
5 next day, correct?

6 A Yes.

7 Q Same three risk parameters have been
8 triggered? Is that -- oh, sorry. Two of the
9 three risk parameters have been triggered?

10 A Yes.

11 Q Okay. So the open options premium
12 calls still has not been reduced under six
13 percent; is that correct?

14 A Correct.

15 Q Okay. Do you know why it still hasn't
16 been reduced to under six percent?

17 A I believe it's likely for the same
18 reason I've described.

19 I'm very certain that I took
20 corrective action on -- this was Tuesday's
21 report -- on Monday.

22 Q You're sure you did?

23 A I'm certain I did.

24 Q How are you so certain?

25 A Because -- well, all right. I'm

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1 certain because I do take these risk metrics
2 seriously, and this is now the second day. And
3 we've had a conversation over that weekend, it
4 would appear by the e-mail exhibit you've shown
5 me, around what to do about the risk metrics
6 being triggered.

7 Q Okay.

8 A So, I mean, again, we can check trade
9 records, but I'm very certain I took action on
10 Monday.

11 Q And it wasn't effective to reduce the
12 ratio to under six percent, correct?

13 A That looks to be correct, yes.

14 Q Okay. I show you what's been marked
15 as Exhibit 50.

16 (SEC Exhibit No. 50 was
17 marked for identification.)

18 BY MR. SCHMIDT:

19 Q For the record, this is the daily risk
20 report for the next day, which is Wednesday
21 or -- I'm sorry -- that was received the morning
22 of Wednesday, December 14th, correct?

23 A Yes.

24 Q 2016?

25 A Yes.

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1 Q Okay. And the same two risk factors
2 are triggered plus another one of the change in
3 NAV factors is triggered as well, correct?

4 A Yes.

5 Q So this is another day where the open
6 options premium value for call has not been
7 reduced under six percent, correct?

8 A Yes.

9 Q Do you know why?

10 A This one I don't understand, no. I
11 mean, again, unless the market went way up that
12 day.

13 Q Okay. If you had taken corrective
14 actions designed to address that risk parameter,
15 it would be reflected in your trading records?

16 A It should be, yes.

17 Q And if your trading records show that
18 you didn't take corrective action, do you have
19 any reason to believe that those are wrong?

20 A No.

21 Q Or are the trading records whatever
22 they are?

23 A No. I mean, again, without having
24 them in front of me, I can't dispute trading
25 records.

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1 Q That's what I'm trying to get at.

2 Whatever they say, they say, right?

3 A Right.

4 Q Okay.

5 BY MR. MORAN:

6 Q Mr. Walczak, I have a question here.

7 In the box at the bottom of Exhibit 50, it
8 says --

9 (Reporter interruption.)

10 BY MR. MORAN:

11 Q All right. In the box at the bottom
12 of Exhibit 50, on the second page, it says,
13 "Call contracts 84,750"; is that correct?

14 A That's what it says, yes.

15 Q And that is net sum, or is it the
16 absolute value?

17 A I honestly don't know what that number
18 refers to.

19 Q Okay. You still have Exhibit 49,
20 correct, from the prior date?

21 A Yes.

22 Q So it looks like that number is the
23 same day over day?

24 A Yes.

25 Q Would that indicate no change in

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1 positions from day to day?

2 A Again, I -- I don't know how the
3 number is calculated; so without looking at the
4 trade record, I can't say.

5 Q Okay. How about this: What is that
6 cell supposed to calculate?

7 A I honestly don't know. I don't use --

8 Q That's not something that you --

9 A The call contracts? I -- no. I mean,
10 I know what long put and short put contracts
11 are, but the call contracts, I'm not sure if
12 that's short or net or gross. I am not just
13 certain what that means. It's not something I
14 use on this report.

15 MR. MORAN: Okay. Thank you.

16 BY MR. SCHMIDT:

17 Q If you wanted to check what trading
18 you did on those days --

19 A Yes.

20 Q -- so picture yourself back in your
21 office in Wisconsin sitting at your computer.
22 What would you do?

23 A We have trade logs.

24 Q On your shared drive?

25 A Yes.

<p style="text-align: right;">Page 598</p> <p>1 Q Okay. Go to December 8th, December 2 9th, 12, 13, 14, to see what you did? 3 A Yes. 4 Q Okay. 5 BY MR. BENSON: 6 Q Are those trade logs available today? 7 A I don't have my computer with me. 8 Q You can find out, though, one way or 9 another? 10 A I might be able to, depending on if 11 Daniel and Kimberly are still in the office. 12 Q Right. I'm not saying today. I'm 13 saying you -- you could answer the question? 14 BY MR. SCHMIDT: 15 Q Meaning that they haven't disappeared 16 or been deleted? 17 A Correct. 18 Q I think that was -- 19 A I think so. I mean, I haven't gone 20 back to check those, but they should be there. 21 Q Okay. 22 A Catalyst in New York has them, if I 23 don't. 24 Q I'm going to show you what's been 25 marked as SEC Exhibit 54.</p>	<p style="text-align: right;">Page 600</p> <p>1 significant drawdown. We are not talking about 2 normal run-of-the-mill suggestions -- 3 A Yes. 4 Q -- she was giving you? 5 And whether she called it "stop the 6 bleeding" or "mitigate the losses," or whatever 7 it is, you've now had four straight trading days 8 where your risk parameters have been triggered 9 and you haven't been able to reduce them to the 10 appropriate level, correct? 11 A Yes. 12 Q Okay. And this is later in the day on 13 the fourth day in a row where that's happened? 14 A This is actually early in the day, I 15 think. 16 Q Oh, is this early in the day? 17 A It's -- it's essentially Tuesday 18 night, it looks like. 19 Q Oh, she's working late. Okay. So 20 three straight days where the risk parameters 21 have been triggered -- 22 A Yes. 23 Q -- and they're actually subsequently 24 triggered the next day as well? 25 A Right.</p>
<p style="text-align: right;">Page 599</p> <p>1 (SEC Exhibit No. 54 was 2 marked for identification.) 3 BY MR. SCHMIDT: 4 Q This is an e-mail from Ms. Rios to you 5 dated December 14, 2016, which is Wednesday. 6 This is later in the day then when you received 7 the daily risk report we just looked at, 8 correct? 9 A Yes. 10 Q Okay. And this e-mail has a proposal 11 on how you might stop the bleeding. Do you see 12 that? 13 A Yes. 14 Q Okay. Do you remember getting this? 15 A No. 16 Q Do you remember Ms. Rios suggesting to 17 you ways that you could stop the bleeding in 18 December of 2016? 19 A I think "stop the bleeding" is a -- is 20 a -- a little bit of a -- I don't know -- an 21 emotional short of term. But she and I 22 regularly collaborated on adjustment option, 23 trading options and so forth. So she has 24 certainly suggested many things to me. 25 Q Okay. But we're talking about a</p>	<p style="text-align: right;">Page 601</p> <p>1 Q Okay. So this is not a normal 2 occurrence? 3 A Right. 4 Q Okay. So do you remember -- and, 5 again, I'm not interested in -- in the normal 6 course, from time to time, you and Ms. Rios had 7 discussions about all kind of things. 8 I'm asking in context of the December 9 drawdown where we just looked at the daily risk 10 reports. I want you focus on that time period. 11 A Sure. 12 Q Did Ms. Rios suggest a way 13 specifically, although not ideal, buying 14 something like end of month December 2280 in a 15 substantial amount to help mitigate losses? 16 A Yes. I mean, it's here in the e-mail. 17 So clearly she suggested it. 18 Q What was your response? 19 A I don't recall what my response was. 20 I may have followed her suggestion. I 21 may have countered with a different suggestion. 22 I'm just not sure. That would be the nature of 23 our discussion regardless of whether it was in 24 drawdown or routinely. 25 Q Okay. Other than the fact that it's</p>

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1 in this e-mail, you have no recollection of her
2 ever making this suggestion to you?

3 A No. Again, we've had lots of
4 conversations: Drawdown, not drawdown, lots of
5 trading suggestions. Nothing about this
6 particular strike or expiration sticks out in my
7 mind.

8 Q Okay.

9 25

10 BY MR. BENSON:

11 Q So you pointed out that Exhibit 54 was
12 actually sent to you basically on late Tuesday
13 night, early Wednesday morning, right?

14 A Yes.

15 Q Are you aware that the futures fund
16 lost about four percent on Wednesday, the 14th
17 of December?

18 A I don't recall that it did so on
19 Wednesday.

20 Q So we can look at that by -- perhaps
21 I'm wrong, or -- you know, it had just lost --
22 it had just lost four percent on -- on the
23 Tuesday that she sent that e-mail?

24 A Yes, that -- that I believe.

25 Q So in terms of --

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1 A Which by the way, accounts for the
2 Tuesday open option premium. That suggests to
3 me, without looking at a chart, that there was a
4 significant upside move on Tuesday.

5 Q Right. But you had kind of said that
6 the "stop the bleeding" was emotional, like was
7 an emotional reaction.

8 Four percent in one day, that's a
9 meaningful drawdown in one day?

10 A Absolutely. I don't mean to minimize
11 the seriousness of the situation.

12 Q Okay. I'm just suggesting that, for
13 me, that was a little bit of an emotional way to
14 characterize it.

15 Okay. You would have characterized it
16 differently?

17 A Yes, as in a severe drawdown.

18 BY MR. WASSERMAN:

19 Q Mr. Walczak, I'm going to put a bunch
20 of exhibits in front of you that I have marked
21 CFTC exhibits.

22 (CFTC Exhibit Nos. 2 and 3
23 were marked for
24 identification.)

25 BY MR. WASSERMAN:

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1 Q The first one is marked CFTC Exhibit
2 2, and it's titled "Daily HFXAX Prices." This
3 is data --

4 (Reporter clarification.)

5 BY MR. WASSERMAN:

6 Q This is data CFTC staff has pulled
7 from publicly available data on the Internet,
8 (indiscernible) finance.

9 CFTC 3, which I'm also going to put in
10 front of, is titled "Daily S&P Prices."

11 So like I said, these are documents
12 that CFTC staff has generated, and I just want
13 to put them in front of you for reference for
14 our discussion over the next few minutes.

15 CFTC Exhibit 2, again, is the daily
16 prices of the futures fund going from about
17 October of 2016 through February 2017 --
18 actually March 2017. Excuse me.

19 And the Daily S&P Prices has the daily
20 open and close high-low and percent change for
21 the S&P index from December 2016 through March
22 of 2017.

23 Do you see those two documents?

24 A Yes.

25 MR. ZILIAK: And I apologize. Do you

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1 have copies for counsel?

2 MR. WASSERMAN: I do. I'm sorry.

3 MR. ZILIAK: I'm sorry. We have --
4 that's 2. Do you have 3?

5 MR. WASSERMAN: I am getting them. My
6 hands can only move so fast.

7 MR. ZILIAK: Understood. Thank you.
8 (CFTC Exhibit Nos. 4A and 4B
9 were marked for
10 identification.)

11 BY MR. WASSERMAN:

12 Q The following document has been marked
13 CFTC Exhibit 4A, Mr. Walczak.

14 Mr. Walczak, do you recognize document
15 four -- document marked Exhibit 4 -- CFTC 4A?

16 A Sure. It's an e-mail. And, again, I
17 don't look at this saying, oh, I remember this
18 specific e-mail, but certainly it's sent to me
19 by Daniel in response to something I asked him
20 to do.

21 Q And the e-mail -- the subject line of
22 the e-mail is "Positions by FCM," correct?

23 A Yes.

24 Q And that document is Bates stamped
25 Catalyst 00050190446 for the record.

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1 I'm going to hand you what's been
2 marked CFTC Exhibit 4B which is Bates stamped
3 Catalyst 0050190447.

4 Because of the way it's been
5 introduced, it's our understanding that it's the
6 attachment to that e-mail that's marked Exhibit
7 4A today.

8 Do you recognize CFTC Exhibit 4B?

9 MR. ZILIAK: I apologize. Can I ask
10 you to repeat? Never mind. I see it now.

11 BY MR. WASSERMAN:

12 Q So the way I've given this to you,
13 this is an example -- another example of a
14 document that we've produced in native format.
15 It was an Excel -- it was produced as an Excel
16 sheet. The Excel sheet didn't have the Bates
17 stamp on it.

18 So the only revision that CFTC staff
19 made to the document was to put the Bates
20 stamp -- to type the Bates stamp in the header
21 of the document.

22 A Okay.

23 Q No other -- the actual data within the
24 boxes has been unaltered in CFTC 4B.

25 Do you recognize this document?

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1 A I've seen documents like this before,
2 sure.

3 Q What is it?

4 A It's a -- as you suggested in
5 spreadsheet format, the fund's positions. This
6 particular sort is actually not by FCM, which is
7 what Daniel sent me. But, again, that's just a
8 sort for the --

9 Q It's actually sorted by contract,
10 right?

11 A It looks that way. It looks by
12 expiration period.

13 Q Right. So the first block of entries
14 is the fund's positions in the S&P third week
15 February options, correct?

16 A Yes.

17 Q And more specifically, the first block
18 before the blank row is the fund's long
19 positions in third week of February expiry
20 options, correct?

21 (Reporter clarification.)

22 BY MR. WASSERMAN:

23 Q Is that correct, Mr. Walczak?

24 A There are -- you're correct that,
25 before the first space, there are some of the

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1 long call positions in that expiration.

2 Q I'm glad you clarified that.

3 So the way your positions are put on
4 at inception are that you have long calls at a
5 series of strike levels and then three times as
6 many short calls at a higher series of strike
7 levels, correct?

8 A That's typical, yes.

9 Q And sometimes after the positions are
10 put on, later on, as an additional hedge, you --
11 you put some -- you go long some additional
12 calls even higher than those short calls, right?

13 A That's correct.

14 Q And so when you say that -- that the
15 first block of entries represents some of your
16 long call positions, you're referring to the
17 fact that you have other long call positions
18 above the short call positions for the February
19 expiry, correct?

20 A Correct.

21 Q So taking a moment to review the
22 entirety of this spreadsheet, this spreadsheet
23 shows the fund's positions in the third week
24 February expiry and the end-of-month February
25 expiry, correct?

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1 A Correct.

2 Q And in both of those expiries, as we
3 have just described, you have some low long
4 calls, some higher short calls, and some even
5 higher long calls, right?

6 A Correct.

7 Q Of those three categories of
8 positions, which positions lose value if the
9 market goes up?

10 A Which positions lose value if the
11 market goes up?

12 Q Yes.

13 A All else being equal, all of the
14 positions will increase in price as the market
15 goes up.

16 Q Right, but it's the -- it's the short
17 positions that cause the fund to lose money; not
18 the long positions in the event the market goes
19 up, correct?

20 A Yes.

21 Q So the exposure, so to speak, rests in
22 the short positions?

23 A Yes. Again, offset by the gains and
24 longs.

25 Q Understood. But the longs themselves

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1 actually increase in value and are actually --
2 I'm sorry.
3 The longs increasing in value is
4 beneficial to the fund as opposed to the shorts
5 increasing in value being detrimental to the
6 fund?
7 A Yes.
8 Q I have to be very precise here. It
9 takes a little time.
10 Okay. One moment please.
11 (CFTC Exhibit Nos. 5A and 5B
12 were marked for
13 identification.)
14 BY MR. WASSERMAN:
15 Q The next document I'm giving to you is
16 marked CFTC Exhibit 5A. And that's Bates stamp
17 Catalyst 0050154655.
18 And I'm also going to give you CFTC
19 Exhibit 5B.
20 MR. ZILIAK: I apologize. I may have
21 misheard. Could you please read back that Bates
22 number?
23 THE REPORTER: 005014655.
24 MR. WASSERMAN: No, it's 0154665.
25 MR. ZILIAK: Thank you.

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1 BY MR. WASSERMAN:
2 Q Exhibit 5B is a spreadsheet, again,
3 produced in native format where the CFTC staff
4 has put the Bates stamp at the top which is
5 Catalyst 0050154666.
6 Mr. Walczak, do you recognize these
7 two documents?
8 A I have seen the spreadsheet, yes.
9 Q Okay. Exhibit 5A is an e-mail dated
10 January 30th from Michael Schoonover to you
11 among others that reads, "Here's the exposure
12 summary spreadsheet that I put together."
13 (Reporter clarification.)
14 BY MR. WASSERMAN:
15 Q On or about January 30th, did Michael
16 Schoonover start to send you these exposure
17 summary spreadsheets?
18 A Yes.
19 Q And, thereafter, did he send these on
20 a daily basis updated with -- with new data?
21 A I believe so, yes.
22 Q You'll notice on Exhibit 5B there's a
23 column four from the right labeled "Delta." Do
24 you see that?
25 A I see that, yes.

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1 Q What does that column mean?
2 A That column expresses the delta -- the
3 overall delta of the portfolio.
4 (Reporter clarification.)
5 BY MR. WASSERMAN:
6 Q What does overall delta of the
7 portfolio mean?
8 A I think, as he's expressed it, he's
9 expressed it in a percentage, but I believe what
10 that would mean is that it's -- the -- the delta
11 of the fund relative to movement in the S&P is
12 3.55 or 355 percent.
13 Q So you're referring to the cell right
14 under where it says "delta" on Exhibit 5B where
15 it says "Negative 355 percent," correct?
16 A Yes.
17 Q And your understanding is that a delta
18 of negative 355 percent means that for every one
19 percent movement in the S&P, the fund is going
20 to move three and a half percent in the other
21 direction?
22 A Yes.
23 (CFTC Exhibit Nos. 6A and 6B
24 were marked for
25 identification.)

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1 BY MR. WASSERMAN:
2 Q I'm giving you a document marked
3 Exhibit 6A, CFTC Exhibit 6A. It's Bates stamped
4 Catalyst 0050183449.
5 A Yes.
6 Q Exhibit 6B is Catalyst 0050183450.
7 Again, CFTC staff has added the Bates stamp.
8 Otherwise it's as it was produced.
9 A Yes.
10 Q That was 6B that I just gave you,
11 right?
12 MR. ZILIAK: Yes.
13 (CFTC Exhibit No. 7 was
14 marked for identification.)
15 BY MR. WASSERMAN:
16 Q CFTC Exhibit 7, Bates stamped Catalyst
17 0050190473.
18 MR. BYLINA: Sam, I'm sorry. Which
19 one is this?
20 MR. WASSERMAN: This is CFTC 7.
21 (CFTC Exhibit Nos. 8 and 9
22 were marked for
23 identification.)
24 BY MR. WASSERMAN:
25 Q And two of these -- I apologize. CFTC

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1 Exhibit 8, Catalyst 0050194445 and CFTC Exhibit
2 9, Catalyst 0050197444.
3 MR. ZILIAK: So, Sam, I presume
4 it's -- 6B is the first of the two?
5 MR. WASSERMAN: I'm going to explain
6 in a second.
7 MR. ZILIAK: Sorry. Of course.
8 BY MR. WASSERMAN:
9 Q Mr. Walczak, looking back at Exhibit
10 6A.
11 A Okay. 6A.
12 Q It appears to be an e-mail from Jeremy
13 O'Keefe to you among others with the subject
14 line "Trade Confirm Final on February 9th,
15 2017."
16 Was it Jeremy's practice to send you a
17 confirmation of the trades that had been
18 executed on the fund's behalf at the end of each
19 day?
20 A Yes.
21 Q Looking at Exhibit 6B, does this
22 appear to be that confirm from February 9th?
23 A Yes.
24 Q And, Zach, to answer your question,
25 it's our understanding that 6B is the attachment

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1 to 6A.
2 MR. ZILIAK: Well, there are two
3 attachments, but there -- there's two
4 attachments to 6A.
5 MR. WASSERMAN: No. There's no 6C.
6 It's just -- there's 7.
7 MR. ZILIAK: On 6A when it lists
8 attachments, it lists two files.
9 MR. WASSERMAN: I'm sorry. I see what
10 you're saying. The face of the e-mail lists
11 attachments as Catalyst Confirm 29 XLSX and
12 Commodity Confirm 29 17 XLXS. I have not
13 printed out the commodity confirm.
14 BY MR. WASSERMAN:
15 Q Mr. Walczak, can you confirm that 6B
16 is the confirm for hedged futures and not for
17 hedged commodity?
18 A Yes.
19 MR. WASSERMAN: Okay. Exhibits 7, 8
20 and 9, Zach, also come with cover e-mails, but I
21 have not given them in the interest of reducing
22 the paper in front of everybody, which is
23 already voluminous.
24 MR. ZILIAK: Thank you.
25 BY MR. WASSERMAN:

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1 Q Okay. Okay. Mr. Walczak, do you -- I
2 believe a moment ago or a few moments ago you
3 were testifying about some conversations at the
4 end of January that you had about adding
5 additional risk metric to your risk parameters,
6 correct?
7 A Well, if are -- are you referring to
8 Michael Schoonover documents?
9 Q No. I think maybe I'm mistaken. I'll
10 strike that.
11 There was a day towards the end of
12 January when the fund suffered a few percentage
13 points loss in response to a much smaller
14 percent move in the S&P, right?
15 A That I don't remember at all.
16 Q Okay. Do you recall at the end of
17 January -- but you do recall at the end of
18 January starting to receive exposure summaries
19 from Mike Schoonover, correct?
20 A Yes. Yes.
21 Q What was the cause of -- of your
22 beginning to receive those exposure summaries?
23 A We wanted to evaluate the items on
24 this sheet against fund performance and against
25 our other risk metrics.

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1 These were some items that had been
2 discussed by the risk committee and proposed,
3 and our conclusion was that we should monitor
4 how they perform against the fund's behavior
5 before putting them into place.
6 Q Had something prompted your decision
7 to do that?
8 A That was really -- it began with our
9 discussions in the December of 2016 drawdown.
10 As I mentioned, I recall at some point in that
11 period David Miller suggested that we start
12 using some of these metrics which we had not
13 used before.
14 Q Okay. And by February 1st, you
15 cleared out all your January positions, correct,
16 by definition?
17 A Yes.
18 Q Okay. So on February 1st, the fund is
19 sitting with positions in the third-week
20 February expiry, the end of February expiry,
21 correct?
22 A Yes.
23 Q And maybe some positions in March,
24 correct?
25 A And possibly April. But sure.

<p style="text-align: right;">Page 618</p> <p>1 Q Looking back at Exhibit -- excuse 2 me -- 4B, does that reflect -- refresh your 3 recollection as to whether the fund had any 4 positions in April? 5 A 4B? 6 Q Whether on February -- as of February 7 10th the fund had any positions in April expiry 8 options? 9 A Right. So which exhibit did you -- 10 Q I'm on 4B. 11 A 4B. That was my question. 12 Q And, again, my question is: Does 13 Exhibit 4B refresh your recollection as to 14 whether as of February 10th, which is the date 15 you received 4B, the fund had any positions in 16 April expiry options? 17 A There are none on the sheet. So 18 apparently at that point we did not. 19 Q Okay. Is it -- what's your memory 20 on -- on or about February 10th of whether you 21 had April expiry options? 22 A Well, again, the reason I raise that 23 question is my memory tells me that at some 24 point in February we did put on April positions. 25 Q Okay. But the vast majority of your</p>	<p style="text-align: right;">Page 620</p> <p>1 correct? 2 A Correct. 3 MR. SCHMIDT: Can I ask one question, 4 Sam? 5 MR. WASSERMAN: Sure. 6 BY MR. SCHMIDT: 7 Q When we had asked before about your 8 trading in December, and you said you'd have to 9 go back and check? 10 A Yes. 11 Q Obviously this is February, but is 12 this the document that you would go back and 13 check except for December 2016? 14 A Yes. 15 Q These are the ones you have saved -- 16 A Yes. 17 Q -- locally? 18 A Yes. 19 BY MR. WASSERMAN: 20 Q The document I'm handing you now is 21 marked CFTC 11A. 22 (CFTC Exhibit Nos. 11A was 23 marked for identification.) 24 BY MR. WASSERMAN: 25 Q It's Bates stamped Catalyst</p>
<p style="text-align: right;">Page 619</p> <p>1 positions at the beginning of February were in 2 the February expiries, correct? 3 A Yes. 4 Q Okay. And on February -- I'm sorry. 5 On -- sorry. Strike that. 6 Do you recall whether the fund engaged 7 in any trading between February 1st and February 8 8th? 9 A I do recall, in fact, from prior 10 testimony months ago that there was a period of 11 time no trading occurred. 12 Q Do you recall specifically what that 13 period was? 14 A It was early in February. 15 Q Approximately the first week in 16 February? 17 A Somewhere in that time frame, right. 18 Q CFTC Exhibit 10 which I believe we 19 also showed you back in October is the trade 20 blotter from February. 21 (CFTC Exhibit No. 10 was 22 marked for identification.) 23 BY MR. WASSERMAN: 24 Q And this spreadsheet does not reflect 25 any trading prior to February 29th, 2017,</p>	<p style="text-align: right;">Page 621</p> <p>1 0050189486. And 11B, which is the attachment to 2 that e-mail, Bates stamp Catalyst 0050189487. 3 (CFTC Exhibit No. 11B was 4 marked for identification.) 5 THE WITNESS: If there is a point that 6 is better for you, I'm happy to take a restroom 7 break. 8 MR. WASSERMAN: We can take five 9 minutes now. 10 Jake controls the record so if it's 11 okay with Jake. 12 MR. SCHMIDT: That's totally fine. 13 We are off the record at 3:38 p.m. 14 (A brief recess was taken.) 15 MR. SCHMIDT: We are back on the 16 record at 3:45 p.m. 17 Mr. Walczak, during the break, no 18 substantive discussions with the staff of the 19 SEC or CFTC; is that correct? 20 THE WITNESS: That's correct. 21 MR. SCHMIDT: Okay. 22 BY MR. WASSERMAN: 23 Q Mr. Walczak, turning your attention to 24 Exhibit 11A and 11B. 25 A Okay.</p>

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1 Q These are -- this is the exposure
2 summary that Michael Schoonover sent you on
3 February 10th, correct?

4 A Yes.

5 Q In the morning of February 10th?

6 A Yes.

7 Q And it was his practice -- starting on
8 January 30th, it was his practice to do this on
9 a daily basis, right?

10 A That's correct.

11 Q And as reflected in the trade blotter,
12 from February 1st to February 8th, you did not
13 enter into any trades for the fund, right?

14 A Correct.

15 Q On -- in those first days of February,
16 you are noticing the delta exposure of the --
17 sorry -- the delta of the portfolio increasing,
18 correct?

19 A During those first days of trading, I
20 noticed the delta of the portfolio to fluctuate
21 from day to day. And recall the context in
22 which this delta is being used.
23 It's being recorded to provide some
24 familiarity for me and others about how the fund
25 behaves relative to that delta calculation. So

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1 we are not currently using it as a risk metric,
2 simply as a -- on a trial observation basis --
3 Q Yeah. I'm not asking how you're using
4 it.

5 I'm just asking -- well, I first ask
6 you to confirm that from January 31st through
7 February 10 that that delta number is steadily
8 increasing, not fluctuating, right?

9 A Well, I would characterize the delta
10 as going from 355 down to 330, holding at 330,
11 rising slightly to 337, and then beginning to
12 climb.

13 Q I'm sorry. I wasn't -- I wasn't
14 precise enough.

15 From February 1st through February
16 6th, the delta is increasing, correct, from 330
17 to -- from negative 330 to negative 470,
18 correct?

19 A It is -- it is higher on February 6th
20 than it was on January 31st. In between it was
21 lower.

22 Q And then on February 7th, it declined
23 slightly to negative 442, right?

24 A Correct.

25 Q And then it increases again to 468 on

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1 February 8th and for 97 on February 9th,
2 correct?

3 A Correct.

4 Q So there's a pretty dramatic increase
5 from the February 1st level to the February 9th
6 level, correct?

7 A That is correct, and the other thing
8 to notice relative to my previous testimony on
9 what delta means is the funds performance was
10 fairly widely divergent from what would have
11 been predicted by the delta number during that
12 period of time.

13 That was my observation as we started
14 to get accustomed to what it should do.

15 Q The -- this exposure summary that you
16 received every -- every day starting on January
17 30th from Michael Schoonover also fills in on
18 the left-hand side the expected return based on
19 the delta number?

20 A Yes.

21 Q And the actual return, correct?

22 A Yes.

23 Q And, for example, on February 3rd, the
24 expected return is -- of the fund is negative
25 2.45, and the actual return is negative 2.36.

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1 Would you characterize that as wildly
2 divergent?

3 A On that particular day --

4 Q Just -- I'm sorry. Go ahead.

5 A On that particular day, they line up.
6 On other days, they are actually directionally
7 opposite so that the delta number, for example,
8 on February 1st suggests that the fund should
9 lose money when, in fact, it gained almost 40
10 basis points. That's what I was referring to.

11 Q On -- on February 6th, the expected
12 return for the portfolio is one percent and the
13 actual return is 1.45, right?

14 A Correct. So roughly 45 percent
15 difference in expected versus actual return.

16 Q .45 percent --

17 A But --

18 Q -- portfolio value?

19 A Half is much greater than what's
20 predicted.

21 Q And on February 9, the prediction is
22 negative 2.86 percent and -- I'm sorry. The --
23 and the actual return is negative 3.44, right?

24 A Yes.

25 Q So there are circumstances in which

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1 the -- so -- so -- so -- in which the expected
 2 return is not wildly divergent from the actual
 3 return?
 4 A Well, as I said, in each of these
 5 cases, if you look at the magnitude, you're --
 6 you're talking about 20, 30, 50 percent
 7 different expected return versus actual.
 8 In other words, the difference, for
 9 example, between an 8 percent drawdown and a 12
 10 percent drawdown.
 11 Q During this time period, specifically
 12 February 1st to February 8th, you're also
 13 looking at OptionVue, right?
 14 A Correct.
 15 Q And OptionVue is the software that
 16 you're referring to on the call we played before
 17 where you can model how changes in the
 18 underlying S&P index will affect the portfolio,
 19 right?
 20 A Yes.
 21 Q And as you stated on the call we
 22 played before, you would model out what would
 23 happen to the portfolio if the S&P were up five
 24 percent and if the S&P were down five percent
 25 over various time frames, right?

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1 A Yes.
 2 Q What was OptionVue showing you about
 3 how the movements in the S&P would affect the
 4 portfolio in this February 1st to February 8th
 5 time period?
 6 A Well, if you recall also from my
 7 previous testimony, I suggested that essentially
 8 I turn OptionVue off as we come into roughly a
 9 two-week window around expiration period and
 10 by -- excuse me -- by turning it off, what I
 11 mean is the five and ten percent intervals tend
 12 not to be appropriate to evaluate very, very
 13 nearby options movement simply because they
 14 don't -- they don't have the time to experience
 15 a five or ten percent move.
 16 For example, in that time frame in
 17 February, a -- in fact, what actually occurred
 18 during this week was a three-sigma move, and it
 19 was two and a half percent.
 20 So -- so during that period of time, I
 21 will look at OptionVue, but I'm essentially
 22 looking at the expiration graph and making my
 23 decisions on a very short term day-to-day time
 24 frame on nearby expiring options.
 25 Q So were you not looking at OptionVue

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1 from February 1st to February 8?
 2 A I looked at it, not every day, and I
 3 think that's also in my prior testimony because
 4 there's really no need to look. The expiration
 5 graph doesn't change, and that's what I'm
 6 looking at.
 7 As you pointed out, the bulk of the
 8 fund's positions were in very nearby
 9 expirations.
 10 Q But you looked at OptionVue at least
 11 once --
 12 A Yes.
 13 Q -- from February 1st to February 8th?
 14 A Yes.
 15 Q Would you say you looked at it at
 16 least three times?
 17 A Probably three times, sure.
 18 Q Any more than that?
 19 A I don't -- I can't recall exactly, but
 20 I would tell you, again, the expiration graph
 21 doesn't change. So there's not a lot of need to
 22 look at the same information.
 23 Q And what do you recall of those three
 24 times you looked at OptionVue during that
 25 period?

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1 A I recall noticing where my breakeven
 2 point was on those expiring options, and if I
 3 recall correctly, I used that as kind of a
 4 trigger point in addition to the risk management
 5 metrics in terms of when I would need to adjust
 6 those positions.
 7 Q Okay. What was OptionVue telling you
 8 during that period about what would happen to
 9 the value of the portfolio -- strike that.
 10 OptionVue would -- part of the
 11 OptionVue graph would tell you -- sorry. Let me
 12 take a third stab at this.
 13 The X axis of the OptionVue graph is
 14 movement in the S&P, right?
 15 A Yes.
 16 Q And so in the middle of that X axis
 17 is -- represents a zero percent move in the S&P,
 18 correct?
 19 A Well, it's not necessarily centered
 20 there, but current market price.
 21 Q Current market price is -- is in the
 22 middle of the X axis?
 23 A Again, not always. That's why I just
 24 say it's current market price.
 25 Q And -- and then the X axis -- the

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1 numbers on the X axis move up in increments? In
 2 other words, the graph will show you what the
 3 portfolio would do if the S&P moves at one
 4 percent, what the portfolio would do if the S&P
 5 moves up two percent, what it would do if the
 6 S&P moves up three percent --
 7 A Yes.
 8 Q -- right?
 9 A Yes.
 10 Q So one graph, one imagine shows you
 11 how the portfolio performs if the S&P moves up
 12 one percent and two percent and three percent?
 13 A Yes. Given a choice of time frames in
 14 volatility assumptions, yes.
 15 Q Understood.
 16 So what did that graph look like when
 17 you looked at it in the February 1st to February
 18 8th time frame?
 19 A The graph looks like -- it has the
 20 same shape as it always done, according to our
 21 strategy, and that is that there's a point at
 22 which you begin to lose money as the market
 23 rises.
 24 Q Okay. And what was that graph telling
 25 you about what would happen to the portfolio if

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1 the S&P went up one percent?
 2 A I don't recall exactly.
 3 Q Do you recall what it said would
 4 happen to the portfolio if the S&P moved up two
 5 percent?
 6 A No. Again, I don't recall the
 7 specifics of what that picture looked like at
 8 that point in time.
 9 Q But you remember the shape of the
 10 graph, right?
 11 A Yes.
 12 Q Do you recall what percentage S&P
 13 increase was at the end of the X axis in the
 14 image?
 15 A No.
 16 Q What was typical?
 17 A There's really not a typical number.
 18 It -- I mean, I adjust that depending on
 19 expirations.
 20 Q On that graph, when you looked at it a
 21 few times from February 1st through February
 22 8th, did you ever -- did the graph ever reflect
 23 the prospect of the fund losing more than eight
 24 percent?
 25 A Yeah. I can't recall that exactly

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1 because what I was looking at was my breakeven
 2 on the nearby options expiration which was now
 3 the entire portfolio.
 4 This was somewhat an usual scenario.
 5 This is not the scenario that you heard me
 6 describe on the call where we had a wide variety
 7 of positions -- and I think that's how I
 8 described it -- in fairly distant expiration
 9 months.
 10 As you pointed out, we had a few in
 11 March, and the bulk of the fund's portfolio were
 12 in February and end of February so --
 13 Q But the function of OptionVue is the
 14 same, right?
 15 It's to tell you what's going to
 16 happen to the portfolio given certain movements
 17 in S&P, right?
 18 A Yes.
 19 Q So my question is -- is, given that
 20 function, do you recall or did the imagine show
 21 you the prospect of the portfolio losing more
 22 than eight percent of its value?
 23 A Again, I don't recall the specific
 24 picture to answer that.
 25 Once again, my focus was on the

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1 expiration graph and my breakeven point, and
 2 that's -- that's my habit. That's how I manage.
 3 When I say habit, that's the process that I
 4 consistently use to manage nearby expirations.
 5 Q I want to turn your attention to CFTC
 6 Exhibit 2, which is the Daily HFXAX Prices. And
 7 I want to turn your attention specifically to
 8 the second page and the -- and the right-most
 9 column which reflects the close of the -- the
 10 NAV on that date.
 11 What's the highest value -- I'm sorry.
 12 What's the highest NAV close that you see in
 13 January?
 14 A Just by eyeball, I see a 1067.
 15 Q On January 23rd, right?
 16 A Yes.
 17 Q Okay. And that appears to be the high
 18 watermark unless you go back -- unless you go
 19 back to before the -- I'm sorry -- unless you go
 20 back to December 15th, right?
 21 A Yeah. That's correct.
 22 By the way, I'm not sure where --
 23 where -- there was a pretty large distribution.
 24 I'm not sure if that's factored in here
 25 somewhere.

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1 Q I think you're right. I think that
2 takes place on December 16th and is reflected in
3 the fairly substantial decrease in the NAV from
4 almost 11 to about 10, right?

5 A Okay.

6 Q Does that consistent to you?

7 A Yes.

8 Q But there were no other distributions
9 after December 16th?

10 A I don't believe so, no.

11 Q So you have the relative high
12 watermark on January 23rd, and then I want to
13 turn your attention to February 8th where the
14 close is 1046. Do you see that?

15 A Yes.

16 Q And that's about two percent down from
17 your -- from that January 23rd high watermark,
18 right?

19 A Sure, yes.

20 Q And on February 8th you received some
21 version of Exhibit 11B, right?

22 A Yes.

23 Q And that version of 11B shows you a
24 delta of negative 468, right?

25 A Yes.

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1 Q Which is intended to approximate the
2 portfolio's reaction to an S&P movement, right?

3 A That's the intent, not yet verified
4 and the reason we're keeping the data, yes.

5 Q And specifically the delta number
6 reflects an approximation that the fund is going
7 to lose over four and a half percent if there's
8 a one percent increase in the S&P, right?

9 A That's what it's intended to portray,
10 again, subject to us monitoring the actuals to
11 see whether that's realistic.

12 Q And if you had looked at your
13 OptionVue on February 8th, would your OptionVue
14 also have showed you that the fund -- that the
15 portfolio would lose approximately four and a
16 half percent, given a one percent increase in
17 the S&P?

18 A First, I don't know because I -- as I
19 said, I don't know that I looked at OptionVue
20 that day or that I can remember the snapshot.

21 Q But OptionVue uses delta to make -- to
22 produce its graph?

23 A OptionVue uses a volatility-modeled
24 delta which I find to be more accurate than a
25 regular delta. And in the year since we have

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1 been not only monitoring but actually using
2 delta as a risk metric, it's been my experience
3 that that delta model has been much more
4 accurate.

5 Q OptionVue's delta model?

6 A Yes.

7 Q Okay. And if we were to use
8 OptionVue, we'd be able to reconstruct -- and
9 put in your portfolio as of February 8th, we'd
10 be able to reconstruct what that delta was,
11 right?

12 A Yes.

13 Q Do you recall whether around February
14 8th OptionVue's prediction about what would
15 happen if the S&P moved up one percent was
16 approximately a negative four and a half percent
17 hit to the fund?

18 A No. I don't recall.

19 Q You don't recall anything about what
20 OptionVue was telling you about a one percent --
21 how a one percent move in the S&P would affect
22 the fund?

23 A I don't because, as I testified, I
24 knew, my breakeven at the time based on the
25 expiring options because, again, a one percent

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1 move has to come attached with a time frame.

2 So my time frame was expiration and
3 where's my breakeven.

4 Q But -- but you're managing the
5 portfolio to try to limit your drawdown to no
6 greater than eight percent, right?

7 A That is correct. And -- and pursuant
8 to that, I was -- I'm very reluctant to abandon
9 the risk framework that allowed me to
10 successfully manage drawdowns in favor of a
11 metric that I had been exposed to for seven or
12 eight days.

13 Q But I'm not sure that answers my
14 question.

15 You said yes, but then I'm not sure
16 how the rest of it relates to the answer to my
17 question.

18 A Well, I think you asked -- or why
19 don't you repeat your question?

20 Q You are managing the fund to try to
21 limit a drawdown to eight percent, right?

22 A That's correct. And the eight percent
23 is characterized over a monthly period. That's
24 when the metrics are developed on the basis of a
25 monthly accounting period.

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1 And the metrics I use -- and they have
 2 a foundation in statistical process control. I
 3 recall from my testimony prior that the eight
 4 percent number is not a stop loss. It's a
 5 process output based on managing --
 6 Q That's not relative to my question.
 7 I'm just asking whether you tried to
 8 manage the fund to limit drawdowns to eight
 9 percent.
 10 A And I think it's very relevant, and so
 11 if -- I'll finish my response.
 12 The way I did that was to use the
 13 existing risk framework in -- under the
 14 principles of statistical process control by
 15 which I managed the process parameters, and the
 16 output ends up being what I want it to be, and
 17 that has been proven over years of history.
 18 So as a result, we are trying out a
 19 delta situation.
 20 I'm sticking to the risk metrics that
 21 I know have been successful for me, managing
 22 against those, managing the portfolio against an
 23 expiration time horizon, as I always have, so
 24 being consistent in applying my process both on
 25 a risk side and a portfolio management side and

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1 expecting that I will get the results I have in
 2 the past.
 3 Q On the call we listened to earlier,
 4 you told the advisors that the goal in
 5 everything you do is to keep your drawdown to
 6 eight percent, right?
 7 A That is correct.
 8 Q And in describing how you actually do
 9 that, you described OptionVue, correct?
 10 A Yes.
 11 Q Okay. So --
 12 A Well, let me -- let me --
 13 Q Were you not --
 14 A On that call I described OptionVue as
 15 a tool I use to make projections on how market
 16 moves, volatility, I mentioned on the call, how
 17 new positions, position adjustments, how they
 18 all impact the potential future performance of
 19 the fund. That's how I use OptionVue.
 20 Q You explained your use of OptionVue to
 21 advisors as a way to explain to them how you try
 22 to limit losses to eight percent, right?
 23 A Yes. It's the primary tool I use to
 24 be forward looking about what sort of
 25 circumstances might create an unacceptable loss.

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1 Q Okay. And as you said on the call,
 2 the unacceptable loss would be something greater
 3 than eight percent?
 4 A Yes.
 5 Q And so were you paying attention to
 6 that -- what that primary tool was telling you
 7 on February 8th of 2017?
 8 A As I mentioned, the way my process
 9 works in managing the portfolio is once we get
 10 near to expiration, I manage the options against
 11 their expiration curve, so to speak, coming into
 12 expiration, as I have always done.
 13 Q Were you paying attention to what
 14 OptionVue, your primary tool, was telling you on
 15 February 8th?
 16 A Yes. It told me the breakeven point
 17 for the options that were coming into
 18 expiration, and that's the information I need to
 19 then make an assessment and a judgment about
 20 when and how to adjust, supplemented by the risk
 21 parameters which, if go -- if they go counter to
 22 my adjustment or my judgment, they alert me to
 23 make -- to take action.
 24 Q Was OptionVue capable of telling you
 25 what would happen to the fund's portfolio if the

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1 S&P rose one percent on February 9th?
 2 A Yes.
 3 Q Were you paying attention to what
 4 OptionVue was telling you in that regard?
 5 A On February 9th, I don't recall if
 6 that's a day I looked at it.
 7 As I said, repeatedly, coming into
 8 expiration, I looked at the expiration graph.
 9 That has always been the process. And in this
 10 case I knew where the breakeven was for the
 11 February positions.
 12 Q But OptionVue would be the primary
 13 tool that would tell you what would happen to
 14 the fund if the S&P went up one percent?
 15 A Yes.
 16 Q I want to turn your attention to
 17 Exhibit 6A and 6B. In particular 6B.
 18 A Okay.
 19 Q This is the trade confirm for your
 20 trades on February 9th, correct?
 21 A Yes.
 22 Q These calls that are at -- and it only
 23 reflects trading calls that are at strikes of
 24 2340, 2345, and 2350, right?
 25 A Yes.

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1 Q And -- and the options with strikes
2 this high were what I've been characterizing as
3 your higher long positions, right?

4 In other words, the long positions
5 that are -- that have strikes even higher than
6 your short positions, correct?

7 A Yes. These are the positions that cap
8 risk.

9 Q Well, do they cap risk of the entire
10 portfolio, or do they cap risk of part of the
11 portfolio?

12 A All options cap risk part of the
13 portfolio.

14 Q Well, let me rephrase the question.

15 These options only cap risk if, in
16 the -- if they cause the aggregate number of
17 call contracts to be equal to or greater than
18 the aggregate number of -- I'm sorry.

19 These options only cap risk if they
20 cause the aggregate number of long contracts to
21 be equal or greater than the aggregate number of
22 short contracts, right?

23 A All of them cap risk to some degree.

24 Q All of them cap risk of particular
25 contracts to some degree. But they don't cap

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1 the risk of the whole portfolio?

2 A They don't cap all the risk of the
3 whole portfolio unless what you said holds.

4 Q Thank you.

5 So on February 9th, you chose not
6 to -- not to buy back any of your short call
7 positions, correct?

8 A That's -- that's correct. According
9 to the normal process I follow, I had no risk
10 triggers, I had no unusual movement in the fund.

11 I had a market point of view over the
12 next week that suggested a -- an adverse move
13 was statistically very unlikely. And given that
14 set of factors, as I have at every point in the
15 past where those have obtained, I made the
16 choice not to cover short calls but instead to
17 adjust and move risk-capping calls.

18 Q And it was your practice to pay
19 attention to -- or to evaluate what you thought
20 was the probability of mean reversion in the
21 market, right?

22 A Yes.

23 (Reporter clarification.)

24 BY MR. WASSERMAN:

25 Q And, in fact, that was a big part of

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1 the research that you did, right, was to
2 evaluate or make an educated determination about
3 what you thought the probability of mean
4 reversion in the market was, right?

5 A Yes. That's correct. That's part of
6 the process.

7 Q And in this period, from February 1st
8 to February 8th, that's something that you were
9 doing research into, right?

10 A Probably. I don't recall
11 specifically, but probably.

12 Q Well, I think -- you just testified
13 that on February 9th you thought that there was
14 a very low probability of the market moving
15 against you, right?

16 A Sure. And I don't know when I was
17 performing that research, but that was certainly
18 my mindset, yes.

19 Q Okay. Right. So you're -- so you're
20 sitting at your computer on February 9th
21 deciding whether to enter into trades or not,
22 and one of the things you're considering is
23 you're -- what your research is telling you
24 about the probability of an upward move, right?

25 A Yes.

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1 (Reporter clarification.)

2 THE WITNESS: It's -- again, it's
3 essentially my informed judgment, research,
4 experience with market behavior. Again, that's
5 the essentially judgment portion of what I use
6 to manage the portfolio.

7 BY MR. WASSERMAN:

8 Q Okay. And as you just testified, that
9 determination was -- was the driving force
10 behind your decision not to reduce your short
11 exposure, right?

12 A No.

13 Q On February 9th?

14 A No. I wouldn't characterize that. I
15 didn't make a conscious decision not to reduce
16 exposure. I simply had no data that suggested I
17 should.

18 Q On February 9th you're sitting there
19 with a large short position in February
20 third-week expiries and end-of-month February
21 expiries, right?

22 A A large short call position, yes.

23 Q Yes.

24 And on February 9th, you chose not to
25 take any of that risk off the table, correct?

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1 A Again, nothing about my process or the
2 information available to me suggested that that
3 would be appropriate to operating the strategy.

4 Q So you chose not to take the risk off
5 the table, correct?

6 A Again --

7 Q I understand you're saying that you
8 thought that was the right move. And I'm not
9 disputing that that's -- I'm not trying to argue
10 with you that that's what you thought.

11 I'm -- I'm simply asking -- I am
12 simply trying to confirm that you made the
13 determination on February 9th -- based on your
14 view of what was good strategy, you made the
15 decision not to reduce any of that short
16 exposure?

17 A Again, it might be a distinction
18 without a difference, but I think it's
19 important.

20 Similar to the first days of February
21 where no trading was done, according to the fund
22 strategy and according to my process, nothing
23 came to my attention that suggested I take
24 action.

25 In other words, nothing about the

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1 market conditions suggested I put on new
2 positions. Nothing about my risk metrics
3 suggested that -- that I make any adjustment
4 actions.

5 So essentially I'm not thinking should
6 I or shouldn't I.

7 I'm looking at my data set, my
8 dashboard, relying on my judgment, relying on
9 consistency of process, and nothing is popping
10 up to tell me to move at this particular day.

11 And that occurred for all of those
12 days.

13 MR. SCHMIDT: What days are you
14 referring to when you gestured?

15 THE WITNESS: I'm sorry. I'm
16 referring to the CFTC Exhibit 11B. I'm sorry.
17 That's the wrong exhibit.

18 CFTC Exhibit 10, the February trade
19 log which displays no trading activity before
20 the 9th of February in the month of February.

21 BY MR. WASSERMAN:

22 Q As reflected on -- on CFTC Exhibit 2,
23 the closing NAV of the fund on February 9th is
24 10.1, right?

25 A Yes.

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1 Q And that reflects a drop from your
2 December -- I'm sorry -- a drop from your
3 January 23rd high of about five percent,
4 correct? A little more than five percent?

5 A Yes.

6 Q So going into trading on February
7 10th, you -- you already have a -- over five
8 percent decline from your January high
9 watermark?

10 A Yes.

11 Q And then turning your attention to
12 exhibit -- CFTC Exhibit 7, is this the trade
13 confirm from February 10th?

14 A Exhibit 7, did you say?

15 Q Yes.

16 A Yes.

17 Q And actually before we get to Exhibit
18 7, Exhibit 11B shows that -- I'm sorry.

19 Exhibits 11A and 11B reflect that you
20 were sent an exposure summary the morning of
21 Friday, February 10th, correct?

22 A Yes.

23 Q And that exposure summary reflected a
24 delta of negative 625, correct?

25 A On February 9th, yes.

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1 Q The 625 is filled in for February
2 10th, correct?

3 A Yes.

4 Q And you received this on the morning
5 of February 10th, correct?

6 A I did, and I'd like to enter into the
7 record again that this is purely -- this is not
8 something from either a risk or operating
9 standpoint that anyone connected with the fund
10 is managing to.

11 It's simply data that's being
12 collected for a potential inclusion of some of
13 these measures in a future risk matrix.

14 Q Do you recall whether you looked at --
15 at OptionVue on February 10th?

16 A I don't recall.

17 Q Would it have been your practice to
18 look at OptionVue when the fund had -- was down
19 over five -- over five percent from its recent
20 high watermark?

21 A I had looked in prior days, and as I
22 previously testified, nothing about what
23 OptionVue is tell me is going to change and
24 nothing is going to be unfamiliar to me.

25 So at this point that tool wasn't

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1 necessary for me to make my judgment calls and
2 reacting to market conditions.

3 Q Turning your attention to CFTC Exhibit
4 7, can you review the trade confirm reflected by
5 that document?

6 A Yes.

7 Q Looking at the first three
8 transactions reflected, is it accurate to
9 categorize that as rolling some high long calls
10 from February to March?

11 A Yes.

12 Q Looking at the next three lines, is it
13 accurate to describe those three transactions as
14 doing the same thing, rolling a high long
15 position from February to March?

16 A I'm sorry. Yes. The next three, so a
17 total of the first six lines?

18 Q Yes.

19 A Yes. That's correct.

20 Q Then on the 7th line, it shows that
21 you bought 1250 contracts of February 2265
22 calls, right?

23 A Yes.

24 Q And that is actually something that
25 reflects a ticking down of your short exposure

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1 to some extent, correct?

2 A Yes.

3 Q Then you have some transactions in
4 April, another ticking down of a thousand
5 contracts of the short exposure. And actually,
6 this appears to reflect rolling those contracts
7 out into April, correct?

8 A Yes.

9 Q And the same thing for the next six --
10 six transactions, correct?

11 A Yes. I think if I have not lost track
12 of your transaction count.

13 Q And turning your attention to the last
14 five transactions, that represents, again,
15 rolling some high long positions from February
16 to March?

17 A Yes. And by the way, all of those
18 high long position rolls decreased risk in the
19 portfolio.

20 Q Well, you're rolling a long position
21 from a -- a nearer month to a further month,
22 correct?

23 A Correct.

24 Q And all other things being equal, as
25 the market goes up, a long call position in a

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1 nearer month is going to increase in value
2 faster than a long call position in a further
3 out month, right?

4 A No.

5 Q Explain to me why I'm wrong.

6 A Because the calls that I rolled were
7 expiring in a week. So they would have
8 basically no value whatsoever. They would --

9 Q If they're --

10 A -- likely not move at all.

11 Q If they're out of the money?

12 A And they are -- as you mentioned,
13 they're the long calls --

14 Q Okay.

15 A -- out of the money.

16 Q I understand. Thank you.

17 A So in summary, all the transactions on
18 this page were designed to reduce and did, in
19 fact, significantly reduce risk in the
20 portfolio.

21 Q Turning your attention to Exhibit 3,
22 what's the S -- what's the close of the S&P on
23 February 9th?

24 A I've lost it. I'm sorry. February
25 9th?

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1 Q Yes. 20 -- 2307.87, right?

2 A Yes.

3 Q Which is pretty close to the strike of
4 the April calls that you're going short on this
5 date, correct?

6 A Yes.

7 Q So you're not -- in rolling your
8 February short positions out to April, are you
9 really significantly reducing risk in this
10 scenario where the strikes of the April calls
11 are almost in the money?

12 A Yes.

13 Q Why is that?

14 A Well, if you'll notice the value of
15 April calls is near \$40, which means that at
16 April expiration, there's no impact on the
17 portfolio if the S&P is nearly two percent
18 higher, which in the volatility environment
19 during this period of time would be a very
20 significant movement.

21 Q I'm sorry. Can you repeat that?

22 A Sure. The value of those calls would
23 allow for, at expiration, a breakeven; in other
24 words, no downside exposure to the fund at a S&P
25 April expiration strike of 2348.

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1 Q Where are you coming up with that 2348
 2 number?
 3 A The value of the call is worth \$38.
 4 Q I see --
 5 A At 2348, it will be worth 38 -- at
 6 expiration, it will be worth \$38.
 7 Q Breakeven on that -- I'm sorry?
 8 A The point --
 9 Q The breakeven on the -- that
 10 particular contract would be for the S&P to be
 11 at 2348 --
 12 A Correct.
 13 Q -- right?
 14 A Which means that there -- there's no
 15 additional exposure as opposed to the call I
 16 bought back at 2265 in February, which, at this
 17 point in time, is nearly acting like a futures
 18 contract, which means S&P moves are nearly one
 19 to one in terms of point for point in the value
 20 of that call. We've now taken a situation where
 21 the market can go up \$38 and have no impact on
 22 the fund's portfolio from this point forward.
 23 MR. WASSERMAN: Can I take a moment?
 24 BY MR. SCHMIDT:
 25 Q Mr. Walczak --

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1 A Yes.
 2 Q -- the last statement you made, are
 3 you saying that there is -- this ensures there's
 4 no impact on the entire portfolio or just on
 5 those contracts.
 6 A On those contracts, and my point was
 7 to demonstrate that this does materially remove
 8 risk in that I took a call that has nearly
 9 one-for-one exposure --
 10 Q Yeah?
 11 A -- and it -- it's a complicated
 12 question. I'm sorry. I have to provide a
 13 completed answer in the interest of --
 14 Q That's fine. I -- you just said
 15 there's no effect on the portfolio, and I just
 16 wanted to know whether you were talking about
 17 those contracts or everything in the portfolio.
 18 I just wanted it to be clear. I'm not
 19 questioning --
 20 A Sure.
 21 Q -- your reasoning or what you're
 22 saying behind it.
 23 A Okay. I gotcha.
 24 Q You just said no effect on the
 25 portfolio --

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1 A Right.
 2 Q -- and I just wanted to know what that
 3 meant.
 4 A Sure. Related to these contracts,
 5 that's correct.
 6 Q Thank you. That's all I was asking?
 7 A Okay.
 8 BY MR. WASSERMAN:
 9 Q Do you recall looking at OptionVue on
 10 February 10th?
 11 A I don't recall it.
 12 Q Would OptionVue have told you what
 13 would happen to the fund's NAV if the market
 14 moved up one percent on February 11?
 15 A I'm -- I'm sorry for my confusion. I
 16 think I've answered those questions.
 17 Q I'm sorry for repeating it, but to
 18 confirm, if you were -- and to be fair, I
 19 haven't asked about it on this particular date.
 20 But if you were looking at OptionVue
 21 on February 10th, OptionVue would tell you or
 22 approximate for you what would happen to the
 23 value of the portfolio if the -- if the S&P were
 24 to go up one percent on February 11th, right?
 25 A Yes.

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1 Q Do you recall -- but you don't recall
 2 looking at OptionVue on February 10th to learn
 3 that.
 4 A No. I recall, again, and I have to
 5 repeat just to make sure that my response is
 6 clear, that in the circumstance of nearby
 7 expirations, the graph in OptionVue is not going
 8 to change from day to day. So I didn't have a
 9 need to go in there to look at it. I had the
 10 information. It's a tool. I had the information
 11 I needed, in combination with the other research
 12 I perform and the process I follow and the
 13 judgment I use, to make the appropriate
 14 decisions.
 15 Q On February 10th -- at the open, on
 16 February 10th, your -- your -- the fund is
 17 sitting over five percent below its January
 18 high-water mark, right?
 19 A Yes.
 20 Q And you represented to advisors and
 21 investors that you tried to limit drawdowns to
 22 eight percent?
 23 A Yes.
 24 Q What did you do on February 10th to
 25 prevent the fund from losing more than eight

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1 percent?

2 A I followed the same process I always
3 do, which is to monitor my risk metrics using
4 essentially statistical process control so that,
5 when those risk metrics are in control, if they
6 get out of control, I react to them; if they're
7 in control, I make judgments based on the
8 process I talked about, coming into expiration.

9 And I am confident -- with many years
10 of experience in process control, I am confident
11 in the methodology that suggests if you control
12 parameters and desired output of the -- of the
13 process is the result that would follow. That
14 was my experience 12 years managing the fund.
15 It was my experience 22 years in process
16 management.

17 Q I'm sorry. Mr. Walczak, could you be
18 a little more specific for me?

19 What exactly were you doing on
20 February 10th to ensure that the drawdown didn't
21 go from five percent to over eight percent?

22 A I was doing what I always do. I was
23 managing --

24 Q Well, can you give me some specifics?

25 A Sure. I monitor my risk metrics.

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1 Q Which risk metrics?

2 A All of the risk metrics.

3 Q The risk metrics from the Manamu
4 Solutions table?

5 A Yes.

6 Q What else?

7 A Using my judgment and using my
8 understanding of the expiration breakeven point
9 in nearby expiring options.

10 Q But -- but the -- the breakeven for
11 particular options doesn't tell you whether the
12 portfolio is going to decline -- doesn't
13 quantify the portfolio decline, right?

14 A I -- I guess if -- that's another way
15 of managing the fund if you want to look at --
16 if you want to take actions according to what
17 you described. I'm simply describing --

18 Q I'm focusing on the -- on -- on the --
19 the attention to percentage decline.

20 You've represented to advisors and
21 investors that you take steps to prevent the
22 decline of over eight percent.

23 A Right.

24 Q And I'm asking what specifically you
25 did on February 10th to prevent that from

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1 happening.

2 A So, again, what I represent to
3 advisors is that we have a process in place
4 that, when followed consistently over time, has
5 unable me to limit losses to roughly eight
6 percent -- sometimes a little bit more, but
7 roughly eight percent. That's certainly our
8 goal.

9 And I think in that representation to
10 sophisticated investors, I have always colored
11 that representation with, there are no
12 guarantees, there may be a market situation that
13 we haven't anticipated, but we follow a
14 consistent process, we follow a set of risk
15 metrics, and -- and the result has been
16 successful. And no guarantees going forward,
17 but the result has been successful in limiting
18 drawdowns.

19 That is how I do it. And every day, I
20 follow some portion of that process, including
21 on February 10th.

22 BY MR. SCHMIDT:

23 Q When you sit at your computer and look
24 at OptionVue, do you need to log into it?

25 A No. Well, I need to log into my

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1 computer, but I have not password-protected
2 OptionVue.

3 Q Do you need to launch it, or is it
4 always launched?

5 A I need to launch it.

6 Q And that's simply by clicking on an
7 icon?

8 A Yes.

9 BY MR. WASSERMAN:

10 Q Can you describe with more specificity
11 what you did on February 10th to prevent a
12 drawdown of more than -- to try to prevent a
13 drawdown of more than eight percent?

14 A On -- on any given day, I'm not
15 focused on a particular action other than what's
16 a part of my normal process. So on February
17 10th, I was doing what I do every day. I'm
18 evaluating my risk metrics. I using my judgment
19 about nearby options expiration and what actions
20 to take. And, I mean, the short answer --

21 Q And what are you looking at to --
22 to -- to decide what actions to take?

23 A Again, I -- I looked at the OptionVue
24 breakeven graph so I understood where those
25 options --

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1 Q You looked at the OptionVue breakeven
2 graph for particular options?
3 A For the nearby expiration series.
4 Q Okay. But your -- your February third
5 week call options were already out of the money,
6 right?
7 A Some call options were in the money.
8 Some were out of the money.
9 Q So some of them were past breakeven,
10 right?
11 A Well, again, I looked at the entire
12 expiration series, in other words, the sum total
13 of options expiring the third week of February.
14 Q Okay. And so did that -- did
15 looking -- but the breakeven for a particular
16 series of options does not tell you what's going
17 to happen to the overall portfolio, right?
18 A No.
19 Q Okay. So my question is: What steps
20 were you taking to make sure the overall
21 portfolio didn't decrease several more
22 percentage points?
23 A So in -- in -- I mean, the short
24 answer is just to refer to CFTC Exhibit 7.
25 Q Okay.

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1 A The trades I did on -- on February
2 10th were, in my judgment, the appropriate
3 actions to take, looking at all the indicators
4 that I look at, nearby expiration, risk metrics,
5 my current informed market view, or my judgment
6 informed by my market view. These are the
7 actions that I felt were appropriate. And,
8 again, consistency is the most important thing,
9 consistent with judgments I made in the past in
10 similar situations.
11 Q Okay. On February 10th, do you recall
12 looking at an OptionVue graph that represented
13 the performance of the whole portfolio?
14 A I don't recall if I did or did not
15 that day.
16 Q If you had looked at an OptionVue
17 graph representing the performance of the
18 overall portfolio on February 10th and that
19 graph showed you that a one-percent move up in
20 the S&P would lead to greater than a
21 three-percent decline in the portfolio, what
22 would you have done?
23 A I can't speculate on what -- what I
24 would have done. I just know that I don't
25 recall looking at it.

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1 Q You don't recall looking at a picture
2 that represented the performance of the whole
3 portfolio on February 10th?
4 A On that particular day, I don't recall
5 if I did or didn't.
6 Q Was there any other tool available to
7 you besides OptionVue that would have -- that
8 could have evaluated the portfolio performance
9 relative to the performance of the underlying
10 S&P?
11 A None that I was comfortable using,
12 which goes to my concern with consistency over
13 time. In other words, I am reluctant to abandon
14 successful operating procedures and -- and
15 successful metrics in favor of things I was
16 unfamiliar with.
17 So the short answer is OptionVue is
18 what I would use. In this case, I understood
19 what it was telling me. Didn't need to look at
20 it every day.
21 Q I'm going to give you a document
22 marked CFTC Exhibit 12?
23 (CFTC Exhibit No. 12 was
24 marked for identification.)
25 BY MR. WASSERMAN:

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1 Q Mr. Walczak, do you recognize the
2 document marked CFTC Exhibit 12?
3 A Yes.
4 Q It's an exposure summary from Mike
5 Schoonover, correct?
6 A Yes.
7 Q And more specifically, it appears to
8 be from February 13th, 2017, correct?
9 A Yes.
10 Q And you'll -- you'll see that it
11 reflects that, on February 10th, the actual
12 decline -- or sorry -- the predicted decline to
13 the fund based on the delta of -- of negative
14 625 was negative 2.23, right?
15 A Yes.
16 Q And that the actual decline in the
17 fund on February 10th was negative 2.48, right?
18 A Yes.
19 Q So sitting here today -- well, one
20 more question before I ask that.
21 And on February 10th, the delta
22 reflected on -- on this exhibit is negative
23 6.61, correct?
24 A Yes.
25 Q Higher than it had been the previous

<p style="text-align: right;">Page 666</p> <p>1 day?</p> <p>2 A Yes.</p> <p>3 Q In other words, according to Mr.</p> <p>4 Schoonover's metrics, the fund was more</p> <p>5 sensitive to the underlying S&P on February 13th</p> <p>6 than it was on February 10th, right?</p> <p>7 A Again, just from postexperience, I</p> <p>8 would -- I would tell you that's -- that's not</p> <p>9 accurate because the sensitivity of the -- the</p> <p>10 fund is dependent not just on delta, but also on</p> <p>11 gamma.</p> <p>12 And as you can see in the gamma</p> <p>13 column, gamma was dramatically reduced by the</p> <p>14 trading activity that I undertook.</p> <p>15 Q As you've testified, delta is meant to</p> <p>16 approximate the movement of the portfolio</p> <p>17 relative to the movement of the underlying</p> <p>18 asset, right?</p> <p>19 A That's correct, at a single point in</p> <p>20 time --</p> <p>21 Q Right.</p> <p>22 A -- and immediately thereafter,</p> <p>23 changes, which is reflective of the gamma</p> <p>24 values. The gamma is very important.</p> <p>25 Q And the delta metric is higher on</p>	<p style="text-align: right;">Page 668</p> <p>1 document, is higher on February 13th than on</p> <p>2 February 10th, right?</p> <p>3 A Yes, it is.</p> <p>4 Q Okay. So as reflected by the delta</p> <p>5 metric, the portfolio is more sensitive to an</p> <p>6 underlying movement on -- of the S&P on February</p> <p>7 13th than it was on February 10th based on the</p> <p>8 delta metrics approximation alone?</p> <p>9 A Yes.</p> <p>10 Q Okay. So sitting here today, do you</p> <p>11 think that the trades you made on February 10th</p> <p>12 significantly reduced the portfolio's exposure</p> <p>13 to the S&P?</p> <p>14 A They -- they did significantly reduce</p> <p>15 the exposure. However, the market movement on</p> <p>16 that day because of the gamma number, moved that</p> <p>17 exposure higher again.</p> <p>18 Q Can you explain that?</p> <p>19 A Well, gamma reflects the change in</p> <p>20 delta.</p> <p>21 Q Okay.</p> <p>22 A So if the market moves higher and you</p> <p>23 have a negative gamma number, your delta would</p> <p>24 get higher absent any change in the positions at</p> <p>25 all.</p>
<p style="text-align: right;">Page 667</p> <p>1 February -- I'm sorry.</p> <p>2 The -- the delta metric on February</p> <p>3 13th reflects that the portfolio is expected to</p> <p>4 decline 6.6 percent in response to a one-percent</p> <p>5 S&P move, whereas the delta on February 10th</p> <p>6 reflected that the portfolio would decline by</p> <p>7 6.2 percent based on a one-percent S&P move,</p> <p>8 right?</p> <p>9 A Actually not because -- for the</p> <p>10 explanation I just offered relative to gamma. A</p> <p>11 one-percent move would most certainly,</p> <p>12 dramatically change that delta calculation.</p> <p>13 Q But a one-percent move in the S&P?</p> <p>14 A Yes.</p> <p>15 Q Would dramatically change --</p> <p>16 A The delta calculation and the</p> <p>17 performance of the fund relative to what that</p> <p>18 delta would predict.</p> <p>19 Q I'm sorry. I don't follow. I'm</p> <p>20 asking just a very specific question.</p> <p>21 Delta, which is intended to</p> <p>22 approximate the movement of the portfolio in</p> <p>23 response to underlying market movement --</p> <p>24 A Yes.</p> <p>25 Q -- that delta, as expressed on this</p>	<p style="text-align: right;">Page 669</p> <p>1 Q Okay.</p> <p>2 A And so in this case, the actions I</p> <p>3 took reduced the delta; market movement</p> <p>4 increased it again.</p> <p>5 Q Well, it appears that you -- the --</p> <p>6 the -- the moves you made reduced the gamma,</p> <p>7 right?</p> <p>8 A They reduced both.</p> <p>9 If you put February 10th's trades into</p> <p>10 any sort of Black Scholes model you like, you'll</p> <p>11 find that they are positive delta.</p> <p>12 Significantly positive delta.</p> <p>13 Q What does that mean, positive delta?</p> <p>14 What does that mean for a trade to be</p> <p>15 positive delta?</p> <p>16 A What does it mean for a portfolio to</p> <p>17 be positive delta?</p> <p>18 Q We've discussed what it means for a</p> <p>19 portfolio -- what delta means for a portfolio.</p> <p>20 A All right.</p> <p>21 Q I'm asking you what does it mean</p> <p>22 for --</p> <p>23 A For this portfolio --</p> <p>24 Q -- a trade --</p> <p>25 A For this portfolio, this is a very</p>

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1 positive delta portfolio.
 2 Q When you say this -- you're holding up
 3 the Exhibit --
 4 A Exhibit 7.
 5 Q -- 7?
 6 A Correct.
 7 Q But Exhibit 7 is not a portfolio.
 8 Exhibit 7 is a series of trades, right?
 9 A As a portfolio is, in fact, a series
 10 of trades; is it not?
 11 Q Okay. I think we're -- we're mixing
 12 up our semantics here. When I say portfolio,
 13 I'm referring to the futures fund portfolio --
 14 A Correct.
 15 Q -- in its entirety --
 16 A Correct.
 17 Q Okay? What's reflected on Exhibit 7
 18 is a series of transactions of about two dozen
 19 transactions --
 20 A Yes.
 21 Q -- right? Okay.
 22 Can we, for the purposes of the
 23 record, refer to them as a series of
 24 transactions?
 25 A So here's my explanation. I'm

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1 actually trying to simplify this.
 2 If we start with a -- an account in
 3 all cash and I did these transactions, would
 4 this not be the portfolio?
 5 Q Okay. So let me --
 6 A And the reason --
 7 Q -- let me -- let me -- I'm going to
 8 help you.
 9 A -- the reason I'm saying that is --
 10 Q I'm going to help you?
 11 A -- this portfolio would have a
 12 positive delta. And if you add this positive
 13 delta -- a significantly positive delta and
 14 gamma, and if you add that to the existing
 15 portfolio reflected by the spreadsheet, that's
 16 what I'm talking about. It would have made a
 17 significant decrease in the negative delta of
 18 the existing portfolio before adding this other
 19 portfolio to it.
 20 So these trades reflect a significant
 21 reduction in the negative delta. The gamma,
 22 however, and the market movement caused that
 23 delta to move again in the wrong direction.
 24 Q As reflected in Exhibit 7, you bought
 25 back a certain number of contracts of your short

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1 position on February 10th, right?
 2 A Yes.
 3 Q And more specifically, you bought back
 4 some of the calls with a strike of 2265 that you
 5 were short, correct?
 6 A Yes.
 7 Q And this appears to reflect that you
 8 bought back a total of 4,000 short contracts,
 9 correct?
 10 A Right.
 11 Q Was the total of 4,000 short contracts
 12 that you bought back a significant percentage of
 13 the overall short call position that you had in
 14 the February -- third-week February expiry?
 15 A I don't know.
 16 Q Can we go back to Exhibit 4B?
 17 Exhibit 4B shows, as of February 10th,
 18 your aggregate -- I'm sorry -- all your short
 19 call positions for the third-week February
 20 expiry, correct?
 21 A Yes.
 22 Q Can you approximate the aggregate
 23 number of contracts that you were short with
 24 strikes between 2260 and 2285?
 25 A Not wanting to do the math in my head,

Page 673

1 I'll have to say no.
 2 Q Okay. Does it -- to save us a little
 3 bit of time, it appears to be in the tens of
 4 thousands, right?
 5 A Okay. Sure. Yes.
 6 Q That you're short approximately 40,000
 7 contracts with strikes from 2260 to 2285.
 8 A Right. And -- and as you can see in
 9 the column above, I'm -- I'm also long a
 10 significant number of contracts with strikes
 11 well below those strikes.
 12 Q Okay. But the -- the -- as we have
 13 discussed before, the portion of the position
 14 that causes the fund to lose money are the short
 15 positions, right?
 16 A In -- in excess of the longs below
 17 them, yes.
 18 Q No, but the actual contracts that
 19 caused the funds to lose money, all other things
 20 being equal, are the short contracts, right?
 21 A But all other things are not equal
 22 because there are long calls with a higher delta
 23 than the short calls.
 24 Q I -- understand and I agree. But --
 25 but the contracts that caused the fund to

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1 decline when the market increases are the short
2 contracts, right?

3 A Yes. Yes.

4 Q Okay. So the risk is in the -- the
5 short contracts, right?

6 A Yes.

7 Q And on February 10th, you've only
8 taken about ten percent of those short contracts
9 off the table?

10 A It's incorrect to look at a percentage
11 of short contracts.

12 Q I'm just asking if it's accurate, that
13 you've only taken about ten percent of that
14 short contract exposure for the third-week
15 expiry off the table?

16 A The implication that that reduces risk
17 by some number related to ten percent, for
18 example, is definitely inaccurate.

19 Q That's not what I'm trying to imply.
20 I'm simply trying to confirm that, in the
21 trading you did on February 10th, you only took
22 approximately ten percent of your short position
23 for the third-week February expiry off the
24 table, right?

25 A Without adding up the numbers, I'll

Page 675

1 trust your math.

2 Q And, in fact, you didn't even really
3 take all the risk off the table. You simply
4 rolled it to April, right?

5 A Yes.

6 Q Okay.

7 A Again, these are material risk
8 reduction activities, and as I'm trying to
9 describe, it is not as simple as every short
10 call represents a -- the same type of risk or
11 the same measure of risk to the portfolio.

12 Different strikes, different levels of
13 expiration are different levels of risk.

14 So, again, I believe it's inaccurate
15 to suggest anything about ten percent of the
16 short calls.

17 It depends on where they are. It
18 depends where they got rolled to. It depends on
19 whether they got repurchased.

20 The point is that it's risk reduction,
21 and that was my assessment of what needed to be
22 done.

23 Q What gave you confidence that the --
24 the moves you made on February 10th would help
25 prevent a -- a drawdown of more than eight

Page 676

1 percent?

2 A Because on February 10th, I used the
3 same process, the same risk metrics, the same
4 indicators, the same judgments that I had used
5 in the past 12 years in order to control
6 drawdowns to roughly eight percent.

7 So I was confident, by continuing my
8 process, it was most likely I would have the
9 same outcome.

10 MR. WASSERMAN: Jake, do you want to
11 go off the record for one minute?

12 MR. SCHMIDT: We are off the record at
13 4:54 p.m.

14 (A brief recess was taken.)

15 MR. SCHMIDT: We're on at 5:06.

16 Mr. Walczak, no substantive
17 discussions of -- with staff of the SEC or CFTC
18 during the break, correct?

19 THE WITNESS: Correct.

20 MR. SCHMIDT: Thank you. Go.

21 BY MR. WASSERMAN:

22 Q Mr. Walczak, is it accurate to say
23 that the way you execute your strategy does not
24 change regardless of whether you're down two
25 percent from a high watermark or five percent

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1 from a high watermark or ten percent from high
2 watermark?

3 A In -- in terms of the way I execute
4 the strategy, no, I continue to use my risk
5 metrics as a guide. The research, I use my
6 judgment so it's -- it's designed not -- to be
7 consistent and not to change.

8 Q And more specifically, the way you
9 manage risk and the -- strike that.

10 More specifically, the way -- the
11 steps you take to manage risk do not change
12 whether you're down two percent from a high
13 watermark, down five percent from a high
14 watermark, or down ten percent from a high
15 watermark?

16 A That -- that certainly -- performance
17 certainly informs my judgment in terms of how
18 aggressive the steps I'm going to take are, and
19 I think that's evident in the February period of
20 time. Day by day, the level of aggressiveness
21 in risk reduction increased dramatically.

22 Q And when does the level of
23 aggressiveness increase?

24 A Well, it certainly increases when we
25 hit a risk trigger, and it then increases based

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1 on market action and my judgment about the
2 portfolio's position.

3 Q Okay. When do you start to take --
4 at -- at what level of drawdown do you start to
5 get more aggressive in managing risk?

6 A There isn't a specific level other
7 than those annotated in the risk matrix --
8 matrix. Other than that, it's simply my judgment
9 about -- but again, we're -- we're trying to
10 manage a process that naturally oscillates and
11 oscillates -- oscillations are reflected by
12 drawdowns. It naturally oscillates within,
13 hopefully, a control band of eight percent so
14 that I use judgment about where we are in that
15 band, being careful not to violate the process
16 control tenants that I use.

17 Q And just to clarify one piece of your
18 answer, you referred to the risk metrics. Are
19 you specifically referring to the risk metric --
20 the -- the --

21 MR. WASSERMAN: Jake, what exhibit is
22 that?

23 MR. SCHMIDT: This one?

24 MR. WASSERMAN: No. The one sitting
25 on top of your pile.

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1 MR. SCHMIDT: 41.

2 THE WITNESS: Yes.

3 BY MR. WASSERMAN:

4 Q Specifically, to the change in NAV per
5 share month risk metric?

6 A That's the only one that reflects a
7 risk metric around drawdowns.

8 Q Okay. And so according -- so is it
9 your testimony that you start to get more
10 aggressive in managing risk when that risk
11 metric is triggered?

12 A When any of the risk metrics are
13 triggered, we naturally -- I naturally get very
14 aggressive in -- in managing the risk.

15 Q Is there any other risk metric that
16 you look at besides the ones in Exhibit -- in
17 CFTC Exhibit 41 that cause you to become more
18 aggressive in managing risk?

19 A There are times when I look at the
20 OptionVue portfolio and decide that even though
21 no risk metric is triggered that I should make
22 a -- an adjustment of some sort.

23 Q Finally, Mr. Walczak, taking you back
24 to -- to the period in early February of 2017
25 and, specifically, the February 1st to February

Page 680

1 10th time frame. At any point in that time
2 frame, did you believe that a one-percent
3 increase in the S&P was likely to result in the
4 fund crossing that eight-percent drawdown
5 threshold?

6 A Again, I don't manage specifically to
7 an eight-percent drawdown threshold. So I am
8 not considering whether we're going to cross
9 that threshold or not because, again, it's not
10 something I'm managing to specifically.

11 What I'm managing to is the process
12 control parameters that over a very long period
13 of time have demonstrated their ability to
14 control drawdowns to roughly eight percent.

15 MR. WASSERMAN: Okay. Thank you. And
16 thank you again for your testimony.

17 THE WITNESS: Sure. Thank you.

18 BY MR. SCHMIDT:

19 Q Okay. I'm handing you what's been
20 marked as SEC Exhibit 66. So this is February
21 15, 2017, correct?

22 (SEC Exhibit No. 66 was
23 marked for identification.)

24 BY MR. SCHMIDT:

25 Q Mr. Walczak?

Page 681

1 A Yes.

2 Q Sorry. It's just got to be audible
3 for her to take it down.

4 A Yes. Sorry.

5 Q And this is after some significant
6 declines in the fund, correct?

7 A Yes.

8 Q Okay. And so I'm particularly
9 interested in your e-mail which you say, "We are
10 propping the market up. In addition to J.J.'s
11 color from the floor, I am receiving texts
12 saying, 'You are all over Twitter today as the
13 reason this market keeps moving higher.' We'll
14 need to revisit our risk mitigation strategy on
15 our call this afternoon. I asked J.J. to join
16 the call to provide some color on execution."

17 Do you see that?

18 A Yes.

19 Q Okay. What do you mean -- what did
20 you mean when you said, "We are propping the
21 market up"?

22 A Best I can recall, I -- I felt as
23 though the publicity that had surrounded this
24 particular week -- there were some articles
25 that -- I think it was a Wall Street Journal

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1 article -- there was some publicity that
 2 suggested a large fund was buying back calls.
 3 And by doing that, there's a -- there's a
 4 potential for -- although, actually, I think
 5 J.J. told us that afternoon that -- that it was
 6 a temporary phenomenon around a particular
 7 execution, but I -- we were concerned about the
 8 attention we were getting and whether or not
 9 that was influencing market behavior.

10 Q Specifically, you were worried about
 11 whether it was having a negative impact on
 12 execution quality, correct?

13 A Yes, that's correct.

14 Q Okay. And that's the reference to
 15 asking J.J. to provide some more color on
 16 execution?

17 A Yes.

18 Q Okay. And the reason being, I think,
 19 is what you alluded to much, much earlier, which
 20 is that, if people know that a large player has
 21 to get out of certain positions, they could use
 22 that information to demand higher prices,
 23 knowing that you have to get out, if you have to
 24 get out and you have to pay whatever they're
 25 going to demand you pay?

Page 683

1 A Yes.

2 Q Right? That's the concern?

3 A Yes.

4 Q Okay. All right.

5 MR. BENSON: Mr. Szilagyi, we talked
 6 about --

7 THE WITNESS: Wow.

8 MR. BENSON: I'm sorry.

9 THE WITNESS: Wow.

10 MR. BENSON: I'm sorry. I was reading
 11 a document called -- we aren't going that long.
 12 Sorry.

13 THE WITNESS: Man. Did I -- did I --
 14 maybe I must have done something --

15 MR. ZILIAK: In the next interview.

16 MR. BENSON: No. We're -- you'll see
 17 that I'm reading it out of the -- Mr. Szilagyi.
 18 I don't have anything for Mr. Szilagyi today.

19 You go, Jake. Sorry.

20 BY MR. SCHMIDT:

21 Q Okay. I'm showing you what's been
 22 marked now as 67.

23 (SEC Exhibit No. 67 was
 24 marked for identification.)

25 BY MR. SCHMIDT:

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1 Q Do you recognize this document?

2 A This was a -- I was asked to provide a
 3 commentary on the fund's performance during this
 4 period of time, and this was my first draft.

5 Q Okay. So the answer to the question
 6 is you do recognize it?

7 A Yes. I'm sorry. Yes.

8 Q It's okay. It's just a lawyer thing.

9 I need to know that you know what you're talking
 10 about?

11 A Yes, yes.

12 Q Okay. So you were asked to provide
 13 this written commentary. You did. You sent it
 14 to Catalyst New York, correct?

15 A Yes.

16 Q Including Mr. Schoonover and Mr.
 17 Szilagyi?

18 A Yes.

19 Q Okay. So at some point, this document
 20 was edited by people in New York and then sent
 21 out?

22 A That's correct.

23 Q Okay. And SEC 70 is what was actually
 24 sent out, correct?

25 (SEC Exhibit No. 70 was

Page 685

1 marked for identification.)

2 BY MR. SCHMIDT:

3 Q You can see there's a whole list of
 4 financial advisors that get --

5 A Sure. So. Right.

6 Q So really, it's the -- let's see, 1,
 7 2, 3 -- the fourth page of Exhibit 70 that
 8 starts with a Catalyst fund logo at the top, and
 9 the title is, "Catalyst Hedged Futures Strategy
 10 Fund Update: February 14, 2017"?

11 A Yes.

12 Q Which is basically your e-mail or the
 13 start of your e-mail. That's what it
 14 corresponds to?

15 A Yes.

16 Q Do you agree with me?

17 A Oh, you're -- you're asking if it
 18 corresponds to --

19 Q Yeah. I'm asking if your draft,
 20 right, or whatever e-mail your -- your language
 21 you're sending, some form of it eventually ends
 22 up in this communication that's sent out to
 23 investment advisors?

24 A Yes.

25 Q Okay. So look back --

<p style="text-align: right;">Page 686</p> <p>1 MR. BENSON: Just so the record is 2 clear, Jake is showing you the attachment to 3 Exhibit 67 where it says, "Catalyst Hedged 4 Futures Strategy Fund Update: February 14, 5 2017," and he's comparing that to the language 6 of -- 7 MR. SCHMIDT: 70. 8 MR. BENSON: -- Exhibit 70. 9 BY MR. SCHMIDT: 10 Q We're on the same page, Mr. Walczak? 11 A Yes. 12 Q Okay. Could you go look at your 13 e-mail, 67? And there's a section that says, 14 "What this means going forward," which I think 15 is at the very end. 16 A Yes. 17 Q Okay? And so you got three bullet 18 points of what this means going forward, the 19 effect of the drawdown, right? 20 A Yes. 21 Q Okay. And in the second bullet point, 22 the second to last sentence says -- you write, 23 The impact on the fund was even more severe due 24 to a perfect storm of conditions, comma, some of 25 which were our own doing.</p>	<p style="text-align: right;">Page 688</p> <p>1 before it went out. 2 Q Well, the final product is signed by 3 you. 4 A Well, I -- 5 Q Are you saying you didn't approve it 6 before it went under on your signature block? 7 A I don't recall approving it. That's 8 not unusual. 9 Q I am accurate? It does say, 10 "Sincerely, Edward S. Walczak, Senior Portfolio 11 Manager?" -- 12 A Yes. 13 Q -- at the bottom, right? 14 A That's -- yeah. That's my signature 15 block that -- yeah. That's my signature block. 16 Q Okay. Okay. So you have no idea why 17 that language was taken out? 18 A No. 19 Q Nobody consulted you on it? That's 20 your testimony? 21 A That is. 22 Q Okay. I'm just going to hand you a 23 written -- Exhibit 155, and then we'll get a 24 sticker on it. 25 (SEC Exhibit No. 155 was</p>
<p style="text-align: right;">Page 687</p> <p>1 Do you see that? 2 A Yes. 3 Q You wrote that? 4 A Yes. 5 Q Which of the conditions were your own 6 doing? 7 A The positioning of the fund as it 8 always is. In other words, how we were 9 positioned is -- it was according to our 10 strategy, but, certainly, we did it. That's my 11 intention. 12 Q Okay. This doesn't mean that you made 13 any mistake at all. This means that you 14 conducted your strategy as you always do? 15 A Yes. 16 Q Do you know why that language was 17 taken out of the final version that was sent out 18 to investment advisors? 19 A No. 20 Q Did you take that language out? 21 A No. 22 Q Who took it out? 23 A I don't know. 24 Q Did you agree with it being taken out? 25 A I didn't look at the final product</p>	<p style="text-align: right;">Page 689</p> <p>1 marked for identification.) 2 MR. ZILIAK: Thank you. 3 BY MR. SCHMIDT: 4 Q This is an e-mail dated March 23rd, 5 2016 from you to Ms. Rios. Do you see that? 6 A Yes. 7 Q Okay. It's about -- the subject you 8 write about is "Questions on performance," 9 correct? 10 A Yes. 11 Q And it deals with the futures fund, 12 correct? 13 A Yes. 14 Q Okay. And you write in here, which is 15 the third full sentence from the end, "But when 16 the market pops" -- sorry. Let me start again. 17 "But when the market pops rapidly, fund NAV will 18 decline." 19 Do you see that? 20 A Yes. 21 Q Is that a true statement? 22 A No. Poor choice of words. It should 23 say "can decline." 24 Q I see. So when you wrote it, you 25 wrote, "will decline"?</p>

Page 690

1 A Yes. As I said, a poor choice of
2 words on my part.

3 Q To your knowledge, have you ever used
4 similar, definite language like that to say,
5 "When the market rises rapidly, the fund NAV
6 will decline"?

7 A I don't recall if I have or not.

8 Q Okay. Any time that you've done that,
9 that is simply a mistake, and it's just a
10 mistake that you repeated numerous times, if you
11 have, right?

12 A Exactly, because the intent is -- I
13 think my previous testimony is -- is accurate in
14 that, if the market pops rapidly, the fund NAV
15 can decline. But even as I suggest in the
16 e-mail, we want the market to go higher. So
17 there will be times when the fund NAV or the
18 market pops rapidly that the fund benefits.

19 Q You've experienced that the -- a rapid
20 increase in the market benefits to the futures
21 fund?

22 A Yes.

23 Q When did that happen?

24 A I don't recall exactly, but I can
25 describe the scenario for you.

Page 691

1 Q Okay. So that's -- so your testimony
2 is that this should say "could," and when you
3 said "will decline," it was a mistake, and any
4 similar statements you've made that don't use
5 words like "could" or "may" and use words like
6 "will" and "definite," those are all mistakes?

7 A Well, it's -- it --

8 Q I just want to know -- right?

9 MR. BYLINA: Well, we'll just say
10 all --

11 THE WITNESS: Exactly. It depends on
12 context.

13 So in this particular e-mail, for
14 example, in this scenario on March 23rd, the
15 portfolio is positioned in a way that, yes, if
16 the market pops rapidly, the fund NAV will
17 decline, but that's not always true.

18 And "pops rapidly" is a very
19 indefinite concept.

20 So the idea is to advise -- if she's
21 speaking to someone, I don't know who, but if
22 she gets questions, yes, the way we're
23 positioned right now at this moment in time and
24 the market pops rapidly, the fund NAV will
25 decline. It's not always true so --

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1 BY MR. SCHMIDT:

2 Q Okay.

3 A -- so maybe it should say "could" or
4 "will," but it depends on the context when --
5 and typically that's in response to a question.

6 So the question -- I would answer the
7 question based on the positioning of the
8 portfolio and the market at that time.

9 Q So any statements you've made over
10 time about what happens to the fund during a
11 rapidly rising market only relate to if the
12 market rises rapidly at that time and they're
13 not general statements about how a rapidly
14 rising market affects the fund? Is that your
15 testimony?

16 A No.

17 Q Okay.

18 A Sometimes I'm responding to a specific
19 question at a specific time, and I will relate
20 my answer to the portfolio positioning at that
21 time.

22 Sometimes I'm describing a general
23 behavior characteristic of the fund that
24 suggests return opportunities are more difficult
25 in a rapidly rising market.

Page 693

1 Q Okay.

2 BY MR. BENSON:

3 Q Mr. Walczak, did you ever communicate
4 to Mr. Szilagyi the risks associated with a
5 rapidly rising market to the fund?

6 A I'm certain that I did at some point,
7 again, in -- in the general descriptor that
8 rapidly rising markets can be a difficult
9 environment for the fund.

10 Q Right. And my question is: Did you
11 ever share that with Mr. Szilagyi?

12 A I'm certain that I did, yes.

13 Q Okay. And did you ever have any
14 discussions with Mr. -- Mr. Szilagyi as to
15 whether that risk should be disclosed to the
16 investing public?

17 A I didn't have any specific discussions
18 about disclosure, no.

19 Q Okay. So we've talked a lot about
20 risk metrics for the futures fund today --

21 A Yes.

22 Q -- right?

23 And we looked at documents, like
24 Exhibit 41, that are these daily risk reports,
25 right?

Page 694

1 A Yes.

2 Q Okay. Can you tell me who monitored

3 the risk metrics for the futures fund from 2015

4 through 2017?

5 A I don't know for sure. Somewhere in

6 there, George Amhrein was appointed as a risk

7 officer because he and I collaborated on

8 formalizing those metrics for the fund.

9 Q Okay. So George Amhrein.

10 A Uh-huh.

11 Q Anyone else?

12 A I -- there's distribution lists at

13 various times.

14 Q Okay. So like, for example, on

15 Exhibit 41, Zach Kavajecz?

16 A Yeah. He was one of our interns. So,

17 right.

18 Q George Amhrein, August Ewald.

19 A Another intern.

20 Q Yourself, Kim Rios.

21 A Yes.

22 Q Are those the people that monitored

23 the risk metrics for the futures fund, as far as

24 you're aware?

25 A They were certainly aware of it. For

Page 695

1 example, the two interns aren't doing any

2 monitoring, really, unless we specifically asked

3 them to do something.

4 Q Actually, if we had talked to the

5 interns, and they said that one of their job

6 descriptions was to actually monitor these daily

7 e-mails and report to you any concerns, would

8 you agree or disagree with that statement?

9 A Depending on what point and time. I

10 do recall giving those instructions at certain

11 points in time, but, you know, Zach is no longer

12 with us.

13 Q Uh-huh.

14 A I'm confident that August is not

15 monitoring risk profiles right now.

16 Q And you didn't give those college

17 interns any specific training on what the

18 risk -- risk metrics meant and what they should

19 be looking for. You just told them to determine

20 if the -- if there had been breaches, correct?

21 A I -- I don't recall specifically other

22 than both of those interns, I believe, in fact,

23 were instructed in the concepts and the

24 strategy.

25 To what extent they fully understood

Page 696

1 it, we did provide them instructions about

2 essentially what those things meant.

3 Q Did you or did Ms. Rios?

4 A Some combination of the two of us.

5 Q Okay. Are you aware of any external

6 risk managers that were responsible for

7 monitoring the risk metrics for the futures

8 fund?

9 A Those specific risk metrics, external

10 risk managers, I'm not aware.

11 Q Okay. I hand you SEC Exhibit 22.

12 (SEC Exhibit No. 22 was

13 marked for identification.)

14 BY MR. BENSON:

15 Q I'm trying to solve a mystery here.

16 So you're not on this e-mail chain, but Exhibit

17 22, which should bear Bates stamp

18 SEC_01_0028481, is an e-mail from Kim Rios to

19 Paul Regger and Jeremy O'Keefe where she

20 attaches various marketing materials related to

21 the hedged futures fund, including the HFXAX

22 presentation for the second quarter of 2016,

23 which begins one, two, three -- at the fourth --

24 fourth page of Exhibit 22.

25 Do you see that?

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1 A Yes.

2 Q Okay. And if you look to the sixth

3 page of that presentation, it says, "Investment

4 strategy: Training methodology." And then there

5 are four bullet points.

6 The fourth bullet point says, "Risk

7 control is an important participate of the

8 strategy; risk metrics are also monitored by an

9 external risk manager"?

10 A Yes.

11 Q Trying to figure out who that is.

12 A That means external to the portfolio

13 management team.

14 Q Oh. So who are you referring to?

15 A George Amhrein, I think, at this time

16 frame.

17 Q Okay.

18 A I am sure it would be him.

19 Q So let me get this straight.

20 Catalyst -- this -- this presentation, it's --

21 on the cover it says, "Catalyst fund."

22 A Yes.

23 Q Who I believe employees George

24 Amhrein?

25 A In some form, yeah.

<p style="text-align: right;">Page 698</p> <p>1 Q Yet -- and actually, on Slide 6, it's 2 got the Catalyst Fund's insignia? 3 A Yes. 4 Q Yet it says that it's monitored by an 5 external risk manager? 6 A Yes. 7 Q So Catalyst Fund is providing its own 8 presentation, saying that there's an external 9 risk manager, but they're really just 10 implying -- but that they're really referencing 11 their own employee -- internal employee. 12 A Yes. As I -- as I testified, external 13 refers to external to the portfolio management 14 team. That was -- that was very often a 15 question by advisors about: All right. Is 16 there anybody looking over your shoulder when 17 you're managing the fund? 18 Q And this actually goes back to an 19 issue we talked about a lot earlier. 20 You were not disclosed publically or, 21 frankly, even to the board of trustees in Mutual 22 Fund Series Trust as being a subadvisor. 23 For all intents and purposes -- all 24 intents and purposes, the investing public and 25 the board of trustees in Mutual Fund Series</p>	<p style="text-align: right;">Page 700</p> <p>1 Q So what experience are you referring 2 to? 3 A Personal experience with evaluating 4 investments and other mutual funds. 5 Q Okay. So had you done a survey of '40 6 Act funds to understand what was common and what 7 was uncommon among their risk management 8 strategies? 9 A No, I did not. 10 Q Okay. So I'm just trying to 11 understand what objective measure you were aware 12 of that was the support for, "This is not common 13 among public mutual funds." 14 A Again, the things that I used to form 15 that opinion were personal investigation of 16 certain mutual funds, observation of mutual fund 17 performance, and correlation to -- the equity 18 market suggested to me that most mutual funds 19 had -- didn't have a risk management structure 20 in place, at least not as -- as I defined risk 21 management and we have in the fund. 22 Q So was there a way that you were able 23 to, you know, look at internal policies and 24 procedures in other '40 Act funds to determine 25 whether they actually had written risk</p>
<p style="text-align: right;">Page 699</p> <p>1 Trust, they thought that you were a portfolio 2 manager of Catalyst, Capital Advisors, right? 3 A I can't comment on what anyone else 4 thought, but -- 5 Q Fair question. 6 A -- that's the function I served, yes. 7 Q That's what all the representation 8 said. 9 A Yes, and that's the function I served. 10 Q Okay. And then I'd like you to turn 11 to Page 9 of that same presentation, which is 12 entitled, "Risk Management," and there are two 13 bullet points. 14 The second bullet point says, "The 15 fund employees a distinct risk management 16 strategy. In addition to the strategy and 17 tactics we use to earn profits, we use a 18 specific set of rules and tactics focused on 19 limiting losses. This is not common among 20 public mutual funds." 21 Do you know what the basis is for the 22 sentence, "This is not common among public 23 mutual funds"? 24 A That -- that was my experience based 25 on what I knew about public mutual funds.</p>	<p style="text-align: right;">Page 701</p> <p>1 management strategies? 2 A No. 3 Q Those are usually not publically 4 available, are they? 5 A I don't know. 6 Q Are you aware of anyone at Catalyst 7 or -- or even Ms. Rios or yourself speaking with 8 any professors at the University of Wisconsin -- 9 University of Wisconsin, Madison, about a survey 10 of public mutual funds and what their risk 11 management strategies were or were not? 12 A We had interactions with Wisconsin and 13 professors, but I don't recall that being a 14 topic. 15 Q That's something that you would 16 anticipate them seeking compensation for such a 17 study, right? 18 A I -- I have no idea. 19 Q But you're not aware of getting any 20 results of the study or -- or anything from any 21 professor at the University of Wisconsin, right? 22 A I don't recall, no. 23 MR. SCHMIDT: Do you recall paying 24 anybody, whether it's a Wisconsin professor or 25 anybody else, to figure out the answer to this</p>

Page 702

1 question?

2 THE WITNESS: No.

3 MR. SCHMIDT: Do you remember running
4 the statement by the chief risk officer of
5 Catalyst to see whether he had any opinion about
6 whether this statement was accurate?

7 THE WITNESS: No. As -- as with every
8 document that Catalyst asked me to prepare, I
9 sent it to them relying on them to identify any
10 misstatements or concerns they had about
11 accuracy.

12 BY MR. BENSON:

13 Q And -- and did you write the sentence,
14 "This is not common among public mutual
15 funds" --

16 A Yes.

17 Q -- at the time?

18 A Yes.

19 Q Thank you. So remember earlier today
20 we talked about the word "strict," as that was
21 used to describe the risk management procedures
22 of the futures fund?

23 A I remember we had a conversation about
24 it, yes.

25 Q And I think you had expressed the

Page 703

1 question as to where that adjective was used in
2 public documents, right?

3 A (Nodding head.)

4 Q Regardless of whether you disagree --
5 agree or disagree with that, I'm going to hand
6 you SEC Exhibit 25. I'm going to ask you to
7 look to --

8 (SEC Exhibit No. 25 was
9 marked for identification.)

10 BY MR. BENSON:

11 Q If you look at the upper right-hand
12 corner, it's Page 23 of 261.

13 A Okay. I -- I'm here.

14 Q You see "Principal Investment
15 Strategies"?

16 A Yes.

17 Q The third paragraph, final sentence
18 says, "Supported by sophisticated options
19 analysis software, the fund employs strict risk
20 management procedures to adjust portfolio
21 exposure as necessitated by changing market
22 conditions," right?

23 A Yes.

24 Q Did you write that language?

25 A I don't recall if I did.

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1 Q Okay. If you didn't write it, do you
2 know who could have?

3 A I -- I think we've -- we've talked
4 before about who's involved in preparing the
5 prospectus, and I'm not really certain.

6 Q Did you ultimately review and approve
7 that sentence?

8 A I don't recall specifically.

9 Q Sitting here today, do you believe
10 that that statement is accurate, that "The fund
11 employs strict risk management procedures to
12 adjust portfolio exposure as necessitated by
13 changing market conditions"?

14 A As I -- as I read, you know, my
15 interpretation and meaning of that word, I would
16 say, yes, it's accurate.

17 Q Okay. And that's your subjective
18 interpretation; is that what you're saying? Or
19 are you say, objectively, you feel that that's
20 an accurate statement?

21 A I'm not sure what the difference is.

22 Q Well, you prefaced your answer with,
23 "Based on my interpretation?"

24 A Yes. So how else would I answer that
25 question exactly?

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1 Q Fair point. Okay. That's fine.

2 Okay. Okay. We talked earlier about
3 how you were a member of the National Futures
4 Association, right?

5 A Yes.

6 Q Okay. And you ceased being an active
7 member of the National Futures Association in, I
8 believe, it was August of -- was it 2015?

9 A I think that's correct.

10 Q Okay. And at that same time, you
11 de-registered your Harbor Fund from CFTC
12 registration as well?

13 A Well, what I de-registered was not the
14 Harbor fund but Harbor Financial, the entity,
15 yeah.

16 Q Yes. I -- I appreciate that. And
17 Harbor Financial, L.L.C., was, up until that
18 point, registered with the CFTC as a CTA,
19 Commodity Trading Advisor, correct?

20 A Correct.

21 Q Okay.

22 MR. SCHMIDT: And at that point, 2015,
23 the Harbor fund didn't exist anymore. It had
24 since converted to the futures fund, right?

25 THE WITNESS: Correct.

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1 MR. SCHMIDT: Okay. I just wanted to
 2 make that clear.
 3 BY MR. BENSON:
 4 Q But you had continued to be the
 5 managing member and the portfolio manager of
 6 Harbor Financial, L.L.C., a CTA, because that
 7 entity advised various separately managed
 8 accounts?
 9 A Correct. And just for -- again, for
 10 accuracy, in that regime, the term "portfolio
 11 manager" I'm not sure has any significance. I
 12 was a -- that entity was registered as a
 13 Commodity Trading Advisor. I was a -- the
 14 principal.
 15 Q Okay. So did you make Catalyst aware
 16 at any point that you were a principal, as you
 17 just used that word, of Harbor Financial,
 18 L.L.C.?
 19 A Yes.
 20 Q And you also made them aware that
 21 Harbor Financial, L.L.C., was a registered CTA,
 22 correct?
 23 A Yes.
 24 Q Okay. And you were specific with
 25 them. You told them that beginning in 2005,

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1 Harbor Financial, L.L.C., became registered as a
 2 CTA, right?
 3 A I think that's when they were
 4 registered, yes. But whatever the registration
 5 was, yeah, I made them aware of that.
 6 Q And were you aware that in connection
 7 with the hedged commodity strategy fund that
 8 Catalyst used the fact that you were a principal
 9 of Harbor Financial, L.L.C., a registered
 10 Commodity Trading Advisor from 2005 onward, as
 11 participate of their marketing material?
 12 A You're asking me if I was aware that
 13 they used that information?
 14 Q Yeah?
 15 A It's -- it's written on fact sheets as
 16 a part of my background, yes.
 17 Q Right. So I'm going to hand you SEC
 18 Exhibit 86.
 19 And if you look at the second page of
 20 SEC Exhibit 86, on the right-hand side, it says,
 21 "Fund Management," correct?
 22 A Yes.
 23 Q And then, "Investment Advisor,
 24 Catalyst Capital Advisors, L.L.C., Edward S.
 25 Walczak, Senior Portfolio Manager, Personal

Page 708

1 Managing Member and Portfolio Manager of Harbor
 2 Financial, L.L.C., a registered Commodity Trader
 3 Advisor from 2005 to the present," right?
 4 A Yes.
 5 Q Well, that's actually not a true
 6 statement in connection with SEC Exhibit 86, is
 7 it?
 8 A Where is 86?
 9 Q That's the one you're looking at right
 10 now?
 11 A Okay. It's -- it's incorrect in that
 12 it doesn't put the end date on my service as a
 13 CTA.
 14 Q Right. So I'm just trying to
 15 understand what -- did you inform Catalyst when
 16 Harbor Financial no longer was registered as a
 17 CTA?
 18 A To the best of my recollection, I did
 19 because I informed them at the time I stopped
 20 managing separately managed accounts.
 21 Q And they could have also easily
 22 determined whether that statement was accurate
 23 as of June 30th, 2016, by going to the CFTC's
 24 website, correct?
 25 A And NFA's website, yeah.

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1 Q And NFA's website. That's exactly
 2 right?
 3 So do you know how it's possible that
 4 Exhibit 86 was made available to the public with
 5 that incorrect fact?
 6 A All I can say it was -- it was
 7 overlooked by all the people that reviewed it.
 8 Q And -- and who at Catalyst would have
 9 been -- had the ultimate responsibility for
 10 ensuring the accuracy of Exhibit 86?
 11 A I don't know.
 12 Q Would it have been Robert Glass as the
 13 CCO?
 14 A In terms of marketing material like
 15 this, I'm not certain that his responsibilities
 16 extend to this.
 17 Q Would it -- would you have had any --
 18 had any responsibility for ensuring the accuracy
 19 of that statement?
 20 A I would likely have been asked to
 21 review this document.
 22 Q Okay. And do you recall doing so?
 23 A The -- I don't recall specifically on
 24 the commodity fund that I reviewed the -- the
 25 commodity fund. It -- it's possible that I had

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1 Kimberly look at it.

2 Q And if the same inaccurate statement
3 was included in the Futures Strategy Fund, would
4 you have reviewed that?

5 A Yes. Very likely.

6 Q Okay. Are you familiar with the TCG
7 Cash Reserve Money Market Fund?

8 A Yes.

9 Q Are you familiar with the TCG Premier
10 Money Market Fund?

11 A I should qualify my answer. I know
12 what the T -- I think I know a little bit about
13 what the TCG Funds are.

14 Q Okay. What is your understanding of
15 what the TCG Funds are?

16 A They are money market funds that
17 invest in -- I want to say bank deposits with --
18 the nut of it is they're not quite as liquid as
19 a normal money market fund and yield a little
20 bit higher, and I think they do that by
21 jockeying deposits around to different banks.

22 Q So how did you come to understand that
23 they're not as liquid as other money market
24 funds?

25 A Well, those funds were presented to me

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1 as an income-producing alternative, which is
2 something hedged futures does and hedged
3 commodity because a lot of the fund's capital is
4 in cash by, I think, Mr. Szilagyi.

5 Q Right. And did you know that Mr.
6 Szilagyi has an ownership interest in the TCG
7 Funds?

8 A I don't recall if he -- if he told me
9 about that or not.

10 Q Okay.

11 A I think -- no, actually he did. He
12 did.

13 Q You would have wanted to know that, I
14 assume?

15 A Well, I'm not sure it's something I
16 would have thought to ask --

17 Q Uh-huh.

18 A -- but I believe he disclosed it to
19 me.

20 Q Did you have the opportunity to invest
21 in any money market fund, or were you directed
22 by Mr. Szilagyi to use the TCG funds?

23 A He -- he suggested that we use them,
24 and we discussed -- he mentioned the issue that
25 they were not quite as liquid as regular funds.

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1 So we -- but there was -- you know, I was
2 favorably inclined to the extra yield for the
3 fund, and we agreed on a very small portion of
4 hedged futures, such that it wouldn't present
5 any risk -- liquidity risk to the fund.

6 I think he told me we got them in a
7 week. So we had a small portion in, knowing that
8 there was basically no possibility that we would
9 need those assets in less than a week.

10 Q And a couple questions on that. When
11 did -- when did you have the first conversation
12 about the TCG funds and their liquidity
13 attributes with Mr. Szilagyi?

14 A I don't know.

15 Q Was it in 2018?

16 A No.

17 Q 2016?

18 A I'm pretty sure we had assets in TCG
19 during all of 2017. So, likely, 2016 or maybe
20 even earlier, but likely before 2017.

21 Q Do you remember Ms. Rios ever
22 suggesting to you that because of the liquidity
23 challenges of the TCG funds that the hedged
24 futures fund reduces exposure to the TCG funds?

25 A We had discussions from time to time.

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1 I think it was more actually relevant to the
2 commodity fund because it was a higher
3 percentage of the commodity fund assets in -- in
4 the TCG funds.

5 Q Well, here's Exhibit 79, and see if
6 this is -- this refreshes -- if this is an
7 example of Ms. Rios suggesting that the hedged
8 futures fund, which is HFXAX, should reduce its
9 TCG position.

10 (SEC Exhibit No. 79 was
11 marked for identification.)

12 THE WITNESS: Yeah. Again, we had
13 several conversations. I'm -- I'm, again, not
14 completely convinced that she's referring
15 specifically to hedged futures as opposed to
16 hedged commodity. It was a larger position in
17 hedged commodity.

18 She was very interested in -- in
19 moving on to different fixed income instruments.

20 BY MR. BENSON:

21 Q Okay. Did you understand that the TCG
22 Money Market Funds that -- the futures fund
23 invested in had exposure to Venezuelan and
24 Brazilian bank bonds?

25 A No.

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1 Q Would that have mattered to you?

2 A It would have asked -- caused me to
3 ask some more questions about -- if that
4 presented a meaningful risk, certainly.

5 Q Are you aware that there are specific
6 rules and regulations surrounding what assets a
7 money market fund can hold if it's held out as a
8 money market fund?

9 A Again, I'm not at all familiar with
10 those rules.

11 Q So would it have mattered to you if
12 you learned that the funds that were named the
13 TCG Cash Reserve Money Market Fund and the TCG
14 Premiere Money Market Fund actually held
15 ineligible assets; in other words, assets that
16 by definition could not be held by a fund that
17 was marketed as a money market fund?

18 A I'm -- certainly, if I was aware that
19 there was some potential violation of a rule or
20 regulation, I would have had to investigate
21 immediately, certainly.

22 Q And would it have mattered to you if
23 you came to learn that the assets that were held
24 in these two money market funds were not demand
25 deposits but had longer maturities, like seven

Page 715

1 days?

2 A Well, I believe I understood that,
3 that they had longer maturities; hence, their
4 lack of liquidity relative to a, quote, unquote,
5 normal money market fund.

6 Q Okay. And then just -- do you know
7 what the prime -- Prime Meridian Investment --
8 do you know what Prime -- Prime Meridian
9 Investment means?

10 A Yes.

11 Q What does that mean?

12 A It's a private placement fund that
13 invests in short-duration, two-year-ish consumer
14 loans. They -- they buy loans from people
15 like -- I don't know. I -- I -- the names are
16 jumping out of my head now. The online lenders.

17 Q Like Lending Tree?

18 A Exactly. That -- that group. So this
19 is a fund that buys those loans, package --
20 well, they -- they -- they buy them, and they
21 service the loans or they contract and service
22 the loans.

23 So that, again, is another
24 fixed-income vehicle that we invest some of the
25 fund's cash in.

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1 Q Okay. So the futures fund did have an
2 investment in the -- in Prime Meridian, right?

3 A Yes.

4 Q And do you know approximately how
5 large of an investment the futures fund had in
6 Prime Meridian as the start -- as of the start
7 of 2017?

8 A I want to -- it's -- it -- it was
9 probably -- see, 2017, I'm thinking percentages
10 in my mind because we went -- we did a lot of
11 investigation on characterizing that security,
12 understanding how much, if at all, we could hold
13 in the fund.

14 It -- that discussion went to the
15 board of trustees, I know for sure, to get
16 approval for that investment.

17 BY MR. SCHMIDT: Who's "we" when you
18 say, "we" investigated a lot?

19 THE WITNESS: Really, myself, and --
20 and Ms. Rios was involved in some of the
21 legwork. But we also had Catalyst involved.

22 Again, George Amrhein was on that
23 project. Jerry Szilagyi was certainly aware of
24 it. And as I said, we went to the board to
25 clarify that this investment was suitable for

Page 717

1 our fund.

2 So in terms of how much we had, that I
3 don't recall.

4 I do remember we kept it to -- my
5 recollection is we kept it to a percentage much
6 smaller than we would have been allowed to by
7 regulation.

8 BY MR. BENSON:

9 Q But your understanding is that the
10 board approved that investment?

11 A Yes. That's my understanding.

12 Q Okay. I'm handing you Exhibit 126,
13 and I believe this is the last exhibit of the
14 day for me.

15 (SEC Exhibit No. 126 was
16 marked for identification.)

17 BY MR. BENSON:

18 Q I'm just trying to understand what's
19 going on here. It seems like Robert Glass, who
20 is the CCO of -- Chief Compliance Officer of
21 Catalyst, Capital Advisors is e-mailing you that
22 he's got a question from the CCO of the trust,
23 which I understand is Mutual Fund Series Trust,
24 asking whether hedged futures would be able to
25 liquidate its investment in Prime Meridian in

Page 718

1 seven days, and then you and Ms. Rios exchange
2 answers; is that right?

3 A Yes.

4 Q Okay. So do you know why Mr. Glass
5 was asking about, you know, how quickly this
6 Prime Meridian investment could be liquidated?

7 A Well, it appears he's responding to a
8 question from his counterpart at the trust
9 level.

10 Q Okay. And do you know who that person
11 is?

12 A No.

13 Q And do you know why the trust was
14 asking about the liquidity of that investment?

15 A No.

16 Q Okay. And you never -- did you have
17 any discussions with the board of trustees about
18 that investment yourself?

19 A I did not personally, no.

20 Q Okay.

21 BY MR. SCHMIDT: Do you know of any
22 subsequent developments, interactions,
23 discussions about this issue after this e-mail?

24 THE WITNESS: We ultimately -- well,
25 we had already at this time invested in the

Page 719

1 fund, and so we continued to monitor. In fact,
2 we're -- we're liquidating the investment now on
3 a gradual basis to keep our percentage
4 investment down.

5 MR. SCHMIDT: Was part of the response
6 you got back that you needed to do that, or was
7 that a separate decision you made independently
8 of anything that somebody at Catalyst or the
9 board told you?

10 THE WITNESS: We made the decision at
11 the portfolio level.

12 MR. SCHMIDT: You and Ms. Rios?

13 THE WITNESS: Yes. Ultimately, I did.

14 MR. SCHMIDT: Okay.

15 BY MR. BENSON:

16 Q One just overreaching question that
17 I'm seeing across all the different documents,
18 it seems as though at times, you and Ms. Rios
19 hold yourselves out as being part of Catalyst,
20 and then other times, you hold yourselves out as
21 being -- we're the portfolio management team,
22 and then you've got New York and Catalyst as
23 external or -- or doing their own thing.

24 And can you help me understand why --
25 why that is in terms of how -- actually, there's

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1 no question. I can figure it out.

2 MR. BENSON: I'm good. It's late. I
3 appreciate all your time over the past few days.

4 If you just go -- if we have a quick
5 two-minute off-the-record conversation --

6 MR. SCHMIDT: We are off at 5:53.

7 (A brief recess was taken.)

8 MR. SCHMIDT: All right. We're back
9 on the record, 5:54 p.m.

10 MR. BENSON: We didn't have any
11 substantive conversations while we were off the
12 record for that one minute, did we?

13 THE WITNESS: We did not.

14 MR. BENSON: Okay.

15 BY MR. SCHMIDT:

16 Q Okay. Other than conversations
17 with -- you've had with counsel, have you talked
18 to anybody else about appearing here yesterday
19 and today?

20 A Only that I was scheduled to appear.
21 No discussions about substance or topics.

22 Q Okay.

23 MR. BENSON: The question really
24 focuses between last night when we ended and
25 this morning.

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1 THE WITNESS: Oh, I'm sorry.

2 MR. BENSON: Yeah, overnight.

3 THE WITNESS: No.

4 MR. BENSON: Okay.

5 BY MR. SCHMIDT:

6 Q No calls with anybody?

7 A No.

8 Q And the same question just about the
9 investigation, generally, not limited to your
10 appearance here today: Have you talked to
11 anybody about the investigation, generally, not
12 counsel, between yesterday and today?

13 A Oh, between yesterday and today, no.

14 Q Okay. Are there any specific things
15 that we've talked about today where you didn't
16 know the answer to or, you know, just were
17 unsure of what might be the right answer or the
18 right document to look at that you can think
19 that somebody else might be the best person to
20 go to?

21 A We've covered a lot of ground. I
22 can't --

23 Q I know. I'm just saying --

24 A Sure.

25 Q -- if there's anything that you're

<p style="text-align: right;">Page 722</p> <p>1 like, you know, I know somebody knows the answer 2 to that and it's really this guy or this woman. 3 Anything like that? 4 A No. I -- I think I would have told 5 you at the time. 6 Q Okay. Big picture in terms of the 7 prospectus and the fact sheets and the drafting 8 finalization and review of that, that's all in 9 New York, as far as you're concerned? Other 10 than the pieces that you've talked about, you 11 don't know who in New York, but it's somebody at 12 Catalyst New York. 13 A Correct. 14 Q Okay. Okay. Before we complete the 15 record, is there anything you want to clarify, 16 add, or have in addition to any of the 17 statements you've made today? 18 MR. ZILIAK: Well, in the words of -- 19 a wise man once said that there's a lot to 20 unpack there. 21 Can we have just -- have just a couple 22 minutes to talk with our client about that? 23 MR. BENSON: Yeah. 24 MR. SCHMIDT: Of course. 25 We're off the record at 5:56.</p>	<p style="text-align: right;">Page 724</p> <p>1 THE WITNESS: No. 2 MR. ZILIAK: Where else does it come 3 up, for example? 4 THE WITNESS: It's commonly used in 5 manufacturing and other processes. 6 Manufacturing processes are very common. 7 MR. ZILIAK: Can you tell us a little 8 bit about how SPC works? 9 THE WITNESS: Sure. SPC is -- is 10 designed to identify process parameters and 11 limitations such that, when the process is 12 running normally, those limitations are not 13 exceeded. And when they are exceeded, that 14 indicates there's something wrong or needs 15 corrective action so that -- it -- it's very 16 common in manufacturing to -- or it's common in 17 manufacturing where SPC is not used to tend to 18 overcorrect a process, meaning, your -- your 19 output isn't what you'd like it to be because 20 you're constantly adjusting the machine, for 21 example. 22 So SPC was developed to identify 23 levels of process parameters that would indicate 24 when it's truly necessary to take some action. 25 So -- so that's kind of a description of -- of</p>
<p style="text-align: right;">Page 723</p> <p>1 (A brief recess was taken.) 2 E V E N I N G S E S S I O N 3 B Y M R . S C H M I D T : 4 Q Back on the record at 6:16 p.m. 5 Mr. Walczak, no substantive 6 discussions with the staff of the SEC or CFTC 7 during the break? 8 A That is correct. 9 Q Okay. At this time I think your 10 counsel is going to ask you some questions. 11 Okay? 12 A Yes. 13 MR. ZILIAK: Great. So, Mr. Walczak, 14 I believe you said earlier in your testimony 15 yesterday and today that you sometimes use -- or 16 commonly use statistical process control in 17 managing the hedged futures fund; is that 18 correct? 19 THE WITNESS: That's correct. 20 MR. ZILIAK: Statistical process 21 control, do you mind if I just call it SPC for 22 short in this? 23 THE WITNESS: Sure. 24 MR. ZILIAK: Is SPC a concept specific 25 to and unique to the trading industry?</p>	<p style="text-align: right;">Page 725</p> <p>1 SPC. 2 MR. ZILIAK: So we've been steeped in 3 this trading world for a little while. Just to 4 put some flesh on the bones here, can you give 5 me an example of -- in the -- in broader 6 industry how someone could use SPC? 7 You talked about how, without SPC, 8 people sometimes overcorrect, tweak a machine 9 too frequently. 10 How does -- how does the SPC 11 equivalent play out? 12 THE WITNESS: So in -- in 13 manufacturing, for example, again, from -- from 14 my experience in high-speed packaging, a typical 15 example would be a packaging machine that's 16 packaging or -- or capping bottles at a very 17 high rate of speed. Suddenly, a cap is 18 misplaced and flies off the line. 19 Now, if the SPC process says, for 20 example, that the parameter is no more than five 21 caps per hour are misplaced, then the first time 22 a cap comes off, no action is taken. And if -- 23 when the sixth cap in an hour period comes off, 24 then the -- the -- the action taken is to 25 call -- then call maintenance. But if -- if</p>

<p style="text-align: right;">Page 726</p> <p>1 that boundary is not exceeded, then the process 2 doesn't need adjusting. 3 MR. ZILIAK: Okay. Now, did you apply 4 SPC to your trading back at Harbor prior to the 5 conversion of the fund? 6 THE WITNESS: Yes, I did. 7 MR. ZILIAK: And you continue to apply 8 it now post-conversion? 9 THE WITNESS: Yes. 10 MR. ZILIAK: At this stage, I'd like 11 to refer back to what has previously been marked 12 as SEC Exhibit 112 please. 13 And I believe you previously testified 14 this is a presentation you gave to the board of 15 the Mutual Fund Series Trust. Perhaps it was in 16 May of 2013? 17 THE WITNESS: Yes. 18 MR. ZILIAK: And that was in 19 conjunction with Catalyst's seeking approval of 20 the conversion from the trust -- from the trust 21 board; is that correct? 22 THE WITNESS: Yes. 23 MR. ZILIAK: Now -- let me see. I'd 24 like you to turn please to -- I believe it's the 25 seventh page. This is Bates number</p>	<p style="text-align: right;">Page 728</p> <p>1 this presentation or most of it; is that 2 correct? 3 THE WITNESS: That's correct. 4 MR. ZILIAK: And Jerry Szilagyi and -- 5 Jerry Szilagyi saw this back in 2013? 6 THE WITNESS: Yes. 7 MR. ZILIAK: And this presentation was 8 given to the board of the trust in 2013? 9 THE WITNESS: Yes. 10 MR. ZILIAK: So is it fair to say that 11 Catalyst and indeed the trust had reason to know 12 as of 2013 that your trading methodology 13 involved six sigma or, more generally, SPC? 14 THE WITNESS: Correct. 15 MR. ZILIAK: All right. All right. 16 Thank you. And now I'd like to turn your 17 attention to what's been previously marked SEC 18 Exhibit 41. 19 Do you have that? 20 THE WITNESS: I have it. 21 MR. ZILIAK: So I believe this is what 22 is sometimes referred to as a Model Alpha report 23 in the past couple days? 24 THE WITNESS: Yes. 25 MR. ZILIAK: Who came up with this set</p>
<p style="text-align: right;">Page 727</p> <p>1 MFST000434 -- sorry, sorry -- 48398. 00048398, 2 it says at the top of the page, "What we do, and 3 how we do it." 4 I'm sorry. Have you found that? Yes. 5 Okay. That's the one. 6 THE WITNESS: Yes. 7 MR. ZILIAK: So in the top, I believe 8 you say, "Position and portfolio risk management 9 require robust analytical tools. We use" -- and 10 then there are two bullet points. "We use 11 OptionVue Software and six sigma control 12 charting." 13 Now, you discussed OptionVue Software 14 pretty extensively in the past few days. We 15 haven't mentioned six sigma before. Is six 16 sigma related to SPC? 17 THE WITNESS: Six sigma is a -- is 18 a -- a term that was used, popularized at 19 General -- General Electric by Jack Welsh in 20 terms of a problem-solving methodology based on 21 six sigma type of concepts. 22 MR. ZILIAK: And -- 23 THE WITNESS: Or SPC concepts. I'm 24 sorry. 25 MR. ZILIAK: Let's see. You drafted</p>	<p style="text-align: right;">Page 729</p> <p>1 of risk parameters? 2 THE WITNESS: I did. 3 MR. ZILIAK: And who came up with 4 these names for the risk parameters? 5 THE WITNESS: I did. 6 MR. ZILIAK: Who came up with the idea 7 of what should be done -- what kind of 8 correction -- corrective actions can be done in 9 response to these various risk trigger -- risk 10 parameters being triggered? 11 THE WITNESS: I did. 12 MR. ZILIAK: Can you explain how you 13 intended this to be used? 14 THE WITNESS: Sure. Well, by 15 explanation, it related to Exhibit 112, CFTC 16 Exhibit 112. This represents an expanded -- 17 MR. BENSON: Excuse me. SEC Exhibit 18 112. 19 THE WITNESS: Oh, I'm sorry, SEC 20 Exhibit 112. 21 This represents, essentially, an 22 expanded version of the trading dashboard that 23 was represented to the board, and so this risk 24 framework is essentially the control chart used 25 for the process I run at the mutual fund.</p>

<p style="text-align: right;">Page 730</p> <p>1 MR. ZILIAK: And when you talk about 2 control chart and a process, like you're control 3 and process and things, fiscal process control, 4 is this indeed then an implementation of fiscal 5 process control? 6 THE WITNESS: That's how I do it, yes. 7 MR. ZILIAK: And going back to your 8 point about how people who don't use SPC might 9 tweak the machine too frequently, what was your 10 intention of what should be done when -- when 11 one of these triggers sounded? 12 THE WITNESS: In accordance with SPC 13 principles, the intention is that when one of 14 these triggers -- these metrics is triggered 15 that is essentially saying the process has gone 16 out of bounds, and, again, in the manufacturing 17 analogy, the maintenance team would be called to 18 determine what action should be taken, whether 19 the machine should be shut down, whether it 20 should simply be adjusted, or whether nothing 21 should be done. 22 And in this case, the maintenance team 23 corresponds to Catalyst's risk committee. 24 MR. ZILIAK: Now, this chart, was it 25 ever --</p>	<p style="text-align: right;">Page 732</p> <p>1 maintenance -- a maintenance guy or a 2 maintenance team and receive some kind of 3 instruction or collaborate on what should be 4 done next. 5 MR. BENSON: So your example that you 6 gave us, if there's one cap that falls off, you 7 know, per hour, no problem, if the threshold is 8 five. But as soon as that sixth cap falls off, 9 then you gotta call the maintenance team and 10 figure out how to fix it, right? 11 THE WITNESS: That's correct. 12 MR. BENSON: Okay. 13 MR. SCHMIDT: I'm sorry. I reason I 14 broke in is I thought you said that in the fund 15 context, the maintenance team is the risk 16 committee. 17 THE WITNESS: Yes, or the risk advisor 18 or risk officer. In other words, a single 19 mechanic, a team of mechanics. 20 MR. SCHMIDT: Okay. The only thing -- 21 THE WITNESS: -- outside help. 22 MR. SCHMIDT: The only thing that 23 threw me was your earlier testimony is, to your 24 knowledge, that risks committee didn't exist 25 before mid-December 2016, and I just want to</p>
<p style="text-align: right;">Page 731</p> <p>1 MR. SCHMIDT: I'm sorry. What time 2 period are we talking about? Back in 2013? 3 When you're talking to the board? When are you 4 talking when you say instead of the maintenance 5 crew, it's the risk committee? I just want a 6 time frame for your statement. 7 THE WITNESS: Well -- 8 MR. BENSON: Were you giving -- you 9 were just giving a hypothetical -- 10 THE WITNESS: Sure, yes. 11 MR. BENSON: -- to -- to what would 12 happen on a manufacturing floor. 13 THE WITNESS: Right. 14 MR. BENSON: And if we understand you 15 correctly, you're referring to a risk 16 committee -- 17 THE WITNESS: As a maintenance team or 18 a -- 19 MR. BENSON: As a maintenance team. 20 Not -- not regarding trading at all, as a -- 21 like a -- like a physical manufacturing team? 22 THE WITNESS: Yeah. So in a 23 manufacturing analogy, the -- the defect would 24 be -- defect rate would exceed a boundary. The 25 operator -- machine operator would call a</p>	<p style="text-align: right;">Page 733</p> <p>1 make sure you're not changing that testimony. 2 THE WITNESS: No. 3 MR. SCHMIDT: Okay. All right. Go 4 ahead. 5 MR. ZILIAK: And just further to that 6 same point, regardless of who takes the next 7 action, is the typical response in SPC to a 8 triggered metric to turn the dials or figure out 9 what went wrong? 10 THE WITNESS: The next thing would be 11 to figure out what went wrong to determine the 12 correct action, usually, with outside 13 assistance. 14 MR. ZILIAK: Okay. Now, did you ever 15 give copies of Model Alpha reports like this to 16 investors? 17 THE WITNESS: No. 18 MR. ZILIAK: Who was the intended 19 audience of this? 20 THE WITNESS: This was strictly an 21 internal management report. 22 MR. ZILIAK: And outside -- that's the 23 Model Alpha reports? 24 THE WITNESS: Yes. That's correct. 25 MR. ZILIAK: Okay. Sorry. And just</p>

<p style="text-align: right;">Page 734</p> <p>1 for clarity, what I have been called Model Alpha 2 is the same as thing as what Manamu Solutions 3 sends to you, correct? 4 THE WITNESS: That's correct. 5 MR. ZILIAK: Okay. 6 MR. BENSON: So, for example, Exhibit 7 41 is such a report? 8 THE WITNESS: Yes. 9 MR. ZILIAK: Thank you. 10 I see that some places on Exhibit 41, 11 there are references to a written explanation. 12 How often did you provide a written 13 explanation? 14 THE WITNESS: Only on the occasions 15 that Catalyst asked me to do so. For example, 16 usually in preparation for communication to 17 the -- to external purposes. 18 MR. ZILIAK: So Catalyst did 19 occasionally ask you for such explanations? 20 THE WITNESS: Right, in the form of -- 21 one of the exhibits actually that we've reviewed 22 today, the communication to advisors, for 23 example, on what happened. 24 MR. ZILIAK: Okay. And to be clear, 25 when Catalyst asks you for that -- such</p>	<p style="text-align: right;">Page 736</p> <p>1 THE WITNESS: Correct. 2 MR. ZILIAK: And that committee 3 included such people as George Amhrein and Jerry 4 Szilagyi and other folks from Catalyst New York, 5 correct? 6 THE WITNESS: Correct. 7 MR. ZILIAK: They commonly received 8 copies of the Model Alpha report; is that 9 correct? 10 THE WITNESS: That's correct. 11 MR. ZILIAK: And when metrics in this 12 report were triggered, did you discuss with them 13 what to do next? 14 THE WITNESS: Yes. 15 MR. ZILIAK: So, in particular, if you 16 did not immediately reduce the option premium 17 below six percent, let's say, within the next 24 18 hours, they would have been aware of this as a 19 matter of course? 20 THE WITNESS: Yes. 21 MR. ZILIAK: And that -- that system 22 of taking these triggers to the risk committee 23 continued in place after December 2016; is that 24 correct? 25 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 735</p> <p>1 explanations, you then did provide such 2 explanations in writing? 3 THE WITNESS: Correct. 4 MR. ZILIAK: Okay. Thank you. I may 5 come back to this. 6 Anything else? 7 Okay. At least as of December 2016, 8 there was then a risk committee impaneled; is 9 this correct? 10 THE WITNESS: That's correct. 11 MR. ZILIAK: And -- 12 MR. BENSON: I'm sorry. Which date 13 did you say? 14 MR. ZILIAK: I said December of 2016; 15 is that correct? 16 MR. BENSON: December -- December of 17 2016? Yes. 18 MR. ZILIAK: Yes. 19 MR. BENSON: I believe that that's 20 accurate. Sorry. I thought you said January 21 2016. 22 MR. ZILIAK: Sorry. 23 December 2016, there was, by then, 24 sometime -- at least by sometime in December, 25 there was an impaneled risk committee?</p>	<p style="text-align: right;">Page 737</p> <p>1 MR. ZILIAK: So January, February, 2 2017, the same system was in place? 3 THE WITNESS: That's correct. 4 MR. ZILIAK: So during February 2017 5 around the drawdown, that same risk committee, 6 including members of Catalyst New York, were 7 aware of your responses to these triggers when 8 they -- when they were sounded? 9 THE WITNESS: That's right. 10 MR. ZILIAK: Okay. 11 MR. SCHMIDT: I'm sorry. Did you 12 explain what is the exact system in place that 13 provides this report to all members of the risk 14 committee? 15 THE WITNESS: I believe they get an 16 e-mail copy. 17 MR. SCHMIDT: They're not -- 18 MR. BENSON: Including -- including 19 Mr. Szilagyi or just Mr. Amhrein? 20 THE WITNESS: I -- I'm fairly sure 21 that Mr. Amhrein gets one. 22 MR. SCHMIDT: Okay. And I see his 23 name here. 24 THE WITNESS: Right. 25 MR. SCHMIDT: But the risk committee</p>

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1 is also Mr. Szilagyi. You said Mr. Miller, I
 2 think, you said.
 3 THE WITNESS: Yes.
 4 MR. SCHMIDT: Anybody else in New York
 5 besides Mr. Amhrein, Mr. Miller, Mr. Szilagyi on
 6 the risk committee?
 7 THE WITNESS: I believe Mr.
 8 Schoonover.
 9 MR. SCHMIDT: Mr. Schoonover? Anybody
 10 else?
 11 THE WITNESS: I can't think of anyone
 12 else. I -- currently, there's additional, but
 13 in this time frame there is not.
 14 MR. SCHMIDT: Okay. And I just -- you
 15 testified just right now that there's a system
 16 in place to notify the risk committee of each
 17 and every one of these daily reports, and I'm --
 18 I don't see anybody else's name other than Mr.
 19 Amhrein.
 20 So I'm asking what is the system in
 21 place or that was in place that notified the
 22 entire risk committee of these daily reports?
 23 THE WITNESS: I -- I -- I believe that
 24 the risk officer, or whatever Mr. Amhrein's
 25 title was, took care of that.

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1 MR. SCHMIDT: And what's that belief
 2 based on?
 3 THE WITNESS: The fact that we had
 4 discussions, not initiated by me, immediately
 5 after a risk trigger was -- was done.
 6 In other words, if we had -- at each
 7 point that we went over a risk metric, the --
 8 the risk committee -- typically, a risk
 9 committee meeting was called.
 10 MR. SCHMIDT: Okay. So from that, you
 11 deduce that there was a symptom in place that
 12 wasn't headed by you or caused by you that
 13 disseminated the risk reports to the other
 14 members of the risk committee?
 15 THE WITNESS: Yes.
 16 MR. SCHMIDT: Okay. But your
 17 testimony just was that they got it every day
 18 regardless of whether something was triggered.
 19 So what's your basis for believing that on all
 20 days, regardless of whether risk parameter is
 21 triggered or not, the entire risk committee gets
 22 every one of these daily reports?
 23 THE WITNESS: I thought they were on
 24 e-mail distribution, but now I see that they are
 25 now.

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1 MR. ZILIAK: I probably led you down a
 2 primrose path there.
 3 I don't think we need that much right
 4 now. Let me just ask you two simpler statements
 5 then.
 6 George Amhrein, who was -- and I
 7 believe he is -- a member of Catalyst New York,
 8 did receive these Model Alpha reports on a daily
 9 basis; is that correct?
 10 THE WITNESS: That is correct.
 11 MR. ZILIAK: And after one of these
 12 risk metrics was triggered, there would be,
 13 typically, at least from December 2016 onwards,
 14 at least through February of 2017, a meeting of
 15 the risk committee to discuss what to do next?
 16 THE WITNESS: Yes.
 17 MR. ZILIAK: And whether or not they
 18 had in front of them the particular Model Alpha
 19 report, they would then hear -- they would then
 20 hear from you and help discuss what would be
 21 done next, what was being done to respond to
 22 this; is that correct?
 23 THE WITNESS: That's correct.
 24 MR. ZILIAK: And, again, Jerry
 25 Szilagyi and others from Catalyst New York were

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1 on that same risk committee?
 2 THE WITNESS: That's correct.
 3 MR. ZILIAK: Okay. Just from my
 4 understanding, does Manamu Solutions, to your
 5 knowledge, send other reports to other people at
 6 Catalyst, or is it specifically just to hedged
 7 futures and just to this team?
 8 THE WITNESS: I believe that --
 9 THE REPORTER: Hold on one sec. Is it
 10 just --
 11 MR. ZILIAK: Just the team listed on
 12 Exhibit 41 from the SEC.
 13 THE WITNESS: My -- my belief is that
 14 hedged futures and hedged commodity funds are
 15 the only ones that this company sends reports
 16 to.
 17 MR. ZILIAK: Okay. All right. At
 18 this stage, I'd like to turn your attention
 19 please to what has been marked as CFTC Exhibit
 20 12.
 21 So let's look please at February 10th
 22 where we see a delta of negative 625 percent.
 23 Am I reading that correctly?
 24 THE WITNESS: Yes.
 25 (Reporter clarification.)

<p style="text-align: right;">Page 742</p> <p>1 MR. ZILIAK: Is that correct?</p> <p>2 THE WITNESS: Correct.</p> <p>3 MR. ZILIAK: To your understanding,</p> <p>4 does that mean that, if on that day the S&P were</p> <p>5 to rise by one percent, the fund's NAV would</p> <p>6 fall by exactly 6.25 percent?</p> <p>7 THE WITNESS: That's what it's meant</p> <p>8 to approximate.</p> <p>9 MR. ZILIAK: It's meant to</p> <p>10 approximate. So what is it leaving out?</p> <p>11 THE WITNESS: It's leaving out, most</p> <p>12 importantly, adjustments that I would make</p> <p>13 during the day.</p> <p>14 MR. ZILIAK: Okay. I believe you</p> <p>15 also, in response to Mr. Wasserman earlier,</p> <p>16 talked about gamma and vega.</p> <p>17 THE WITNESS: Yes. So there are</p> <p>18 other -- and that's why delta only approximates,</p> <p>19 and sometimes ineffectively, the fund's exposure</p> <p>20 to price because it doesn't take into account</p> <p>21 other Greeks.</p> <p>22 MR. SCHMIDT: I'm sorry. I don't</p> <p>23 remember any testimony about vega. Did you</p> <p>24 testify about vega?</p> <p>25 MR. ZILIAK: He definitely testified</p>	<p style="text-align: right;">Page 744</p> <p>1 if you were over the next day to buy 100 delta,</p> <p>2 would you then expect the delta the next day to</p> <p>3 be exactly negative 525 percent?</p> <p>4 THE WITNESS: No.</p> <p>5 MR. ZILIAK: And why is that?</p> <p>6 THE WITNESS: That would be because</p> <p>7 market movement in combination with gamma would</p> <p>8 change the delta independent of what I did.</p> <p>9 MR. ZILIAK: So taking that one step</p> <p>10 further, could you, upon seeing a negative 625</p> <p>11 percent delta over the course of the next day</p> <p>12 buy delta net and yet still end up with a more</p> <p>13 negative delta at the end of that day?</p> <p>14 THE WITNESS: Yes. In -- in fact,</p> <p>15 that's exactly what happened on the 10th of</p> <p>16 February.</p> <p>17 As I previously testified, the trades</p> <p>18 on February 10th were, in fact, positive delta.</p> <p>19 So let me --</p> <p>20 MR. MORAN: Before we leave this CFTC</p> <p>21 No. 12, since you brought it up, and I think you</p> <p>22 did define the term very early yesterday, so a</p> <p>23 long time ago, but can you describe what is</p> <p>24 vega?</p> <p>25 THE WITNESS: Vega is the sensitivity</p>
<p style="text-align: right;">Page 743</p> <p>1 about gamma. He may not have testified about</p> <p>2 vega. I may have misrepresented that.</p> <p>3 MR. SCHMIDT: I -- I could have missed</p> <p>4 it.</p> <p>5 Did you testify about vega on this</p> <p>6 chart?</p> <p>7 THE WITNESS: I -- I don't recall</p> <p>8 testifying on -- about vega, no.</p> <p>9 MR. SCHMIDT: Okay.</p> <p>10 MR. ZILIAK: You're right. I think he</p> <p>11 mentioned vega yesterday in a different context,</p> <p>12 and I can play it over in my mind.</p> <p>13 MR. SCHMIDT: Okay. So your answer is</p> <p>14 you testified about gamma?</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. SCHMIDT: And delta?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. SCHMIDT: Okay. All right. Sorry</p> <p>19 to interrupt.</p> <p>20 MR. ZILIAK: No, no. Thank you for</p> <p>21 correcting that.</p> <p>22 MR. ZILIAK: Let me ask you a related</p> <p>23 question.</p> <p>24 Looking still at February 10th where</p> <p>25 again the -- the delta was negative 625 percent,</p>	<p style="text-align: right;">Page 745</p> <p>1 of an options price to changes in volatility.</p> <p>2 MR. MORAN: Understood. Okay. Great.</p> <p>3 What does this number mean here mean,</p> <p>4 let's say, under February 10th where it says,</p> <p>5 "negative 1066 percent"?</p> <p>6 THE WITNESS: I don't know the units</p> <p>7 of measure on this calculation. They have never</p> <p>8 been explained to me on -- for the vega</p> <p>9 calculation.</p> <p>10 MR. MORAN: Would it be consistent</p> <p>11 with the delta calculation?</p> <p>12 THE WITNESS: I don't know. It's</p> <p>13 never been explained to me.</p> <p>14 MR. BENSON: Did you ever -- did you</p> <p>15 ever ask for an explanation?</p> <p>16 THE WITNESS: No.</p> <p>17 MR. BENSON: Why not?</p> <p>18 THE WITNESS: Because, as I testified</p> <p>19 previously, these were -- these -- this was data</p> <p>20 we were collecting. We're not managing to this</p> <p>21 numbers.</p> <p>22 So, in particular, the focus from</p> <p>23 members of the risk committee was about delta</p> <p>24 and gamma. So those are the -- the numbers that</p> <p>25 I focused on.</p>

<p style="text-align: right;">Page 746</p> <p>1 MR. MORAN: When we listened to that 2 little brief call from earlier today, I think 3 you -- I think your quote was that the most 4 important input, even more than the price of the 5 S&P, is the level of implied volatility. 6 THE WITNESS: Yes. That's correct. 7 MR. MORAN: How do you measure your 8 exposure to the level of implied volatility or 9 your sensitivity to changes in applied 10 volatility? 11 THE WITNESS: I do that with 12 OptionVue. 13 And -- and actually, I'm actually glad 14 you asked that question because another 15 characteristic of this time frame was a very 16 unusual relationship between price and 17 volatility. 18 The VIX, most common measure, was 19 actually up over 20 percent in those few days' 20 time, which, again, is very unusual behavior, 21 which is also why a negative volatility number 22 is actually typically positive in terms of 23 offsetting some of a negative delta calculation. 24 And just one other comment I'd like to 25 make is at the time, certainly, we weren't</p>	<p style="text-align: right;">Page 748</p> <p>1 you're not concerned about. You know? 2 THE WITNESS: Well, no. My point 3 is -- and as I've -- in describing the strategy, 4 I make emphasis on this -- is one of the 5 thing -- things that the strategy takes 6 advantage of is the inverse relationship between 7 price and volatility. 8 That means that I always want to be 9 short vega above the market and long vega or at 10 least neutral vega below the market. 11 So if I see a short vega number in my 12 call positions, I'm -- I'm absolutely not 13 concerned about it. 14 MR. MORAN: Okay. Here, let's ask it 15 a different way here. 16 The number you see as your vega 17 number, is it a percent similar to what we see 18 here on CFTC No. 12 or is it dollar vega? 19 THE WITNESS: I see a dollar vega. I 20 can change that, but most of the time, I have 21 set it to dollar. 22 MR. MORAN: Could you give me a range 23 what it normally is? 24 THE WITNESS: Honestly, it -- it all 25 depends on where the portfolio is.</p>
<p style="text-align: right;">Page 747</p> <p>1 aware -- I think we all are now -- of some 2 allegations of manipulation of the VIX contract. 3 So I can only say I scratched my head about 4 how -- how the VIX could rise so dramatically in 5 an equally dramatic rise in -- in price during a 6 short period of time. 7 I don't know the answer to that, but 8 it's just interesting to learn now that -- that 9 there is some allegation of manipulation of 10 that -- that index. 11 MR. MORAN: Okay. I would like to 12 revisit -- when you say you look at OptionVue, 13 does OptionVue calculate a number, a vega 14 number, for the portfolio? 15 THE WITNESS: Yes, it does. 16 MR. MORAN: What approximately was 17 your vega in that first week of February? 18 THE WITNESS: I don't recall. 19 MR. MORAN: Was it larger than normal? 20 THE WITNESS: I -- I don't know how to 21 characterize normal, and I don't recall the 22 exact number so there's no way I can answer 23 that. 24 MR. MORAN: You probably have an 25 average level that you always see and that</p>	<p style="text-align: right;">Page 749</p> <p>1 Right now, the vega in the portfolio 2 is pretty near zero. 3 MR. MORAN: Okay. How about in early 4 February? 5 THE WITNESS: It would have been very 6 negative. 7 MR. MORAN: Yeah, sitting right at all 8 the shorts, right? 9 THE WITNESS: Sure. 10 MR. MORAN: Okay. Thank you. 11 MR. SCHMIDT: All right. 12 Sorry. Are you on different exhibit 13 now? 14 MR. ZILIAK: I'm deciding whether to 15 go to another exhibit. 16 MR. SCHMIDT: Oh. Okay. I'm sorry. 17 I didn't know if I missed it. 18 MR. ZILIAK: No, you didn't miss 19 anything yet. 20 I was about to, but I am trying to 21 decide whether to continue where we were given 22 that. I'm sorry. 23 I believe earlier you -- just a few 24 minutes ago you said that buying delta net and 25 yet still seeing your delta become more negative</p>

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1 over the course of the day was exactly what you
2 experienced on around February 10th of 2017; is
3 that correct?

4 THE WITNESS: Correct.

5 MR. ZILIAK: And at that stage, I'd
6 like to refer you to CFTC Exhibit 7?

7 THE WITNESS: I'll offer an additional
8 comment on -- on that question as well, since we
9 just discussed volatility.

10 In addition to gamma -- and this goes
11 to the interaction of all of the Greeks on each
12 other and options pricing.

13 In addition to gamma, an increase in
14 volatility on a short call position will also
15 increase or make the call options delta more
16 negative.

17 So the dramatic increase in the VIX
18 during this period of time also had a negative
19 influence on delta independent of what I was
20 doing to counteract that.

21 MR. ZILIAK: Thank you.

22 Exhibit 7 of the CFTC, this -- this
23 was the -- a list of the trades you made on
24 February 10th, 2017; is that correct?

25 THE WITNESS: That's correct.

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1 MR. ZILIAK: And you stated earlier
2 that you believe this -- this set of trades in
3 isolation would be long delta?

4 THE WITNESS: Yes.

5 MR. ZILIAK: So by making these
6 trades, all else equal -- all else equal, by
7 making these trades, did you increase or
8 decrease the magnitude of the negative delta
9 that your portfolio had at the time?

10 THE WITNESS: Decrease.

11 MR. ZILIAK: Okay. I believe also Mr.
12 Wasserman made the point that -- in fact, let
13 me, before I bring it up, let's go to another
14 exhibit please.

15 Could I direct your attention to what
16 has been marked as Exhibit CFTC 4B please? Do
17 you have that?

18 THE WITNESS: Yes.

19 MR. ZILIAK: Okay. Now, I have not
20 added it up myself, but I believe we discussed
21 that, looking just at the February 2017
22 expiration -- not the end of the month
23 expiration and not the March expiration, just
24 that first expiration -- and looking just at the
25 short call positions that appear on the first

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1 and second page of this exhibit, that, in total,
2 you were short some tens of thousands of call
3 contracts.

4 And I believe Mr. Wasserman

5 represented it was perhaps around 40,000; is
6 that correct?

7 THE WITNESS: Yes.

8 MR. ZILIAK: And he, in turn, stated
9 that, looking back at CFTC Exhibit 7 for a
10 second, you had purchased back on February 10th
11 about 4,000 of your short February calls; is
12 that correct?

13 THE WITNESS: Correct.

14 MR. ZILIAK: And he, in turn, stated
15 that that 4,000 or so short calls you had
16 purchased back would amount to perhaps ten
17 percent of your overall short call position from
18 February 10th as represented on Exhibit 4B; is
19 that correct?

20 THE WITNESS: That's what I recall,
21 yes.

22 MR. ZILIAK: Now, I took his
23 implementation -- his implication there to be
24 that, by purchasing back just ten percent of
25 your shorts, you hadn't done enough to reduce

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1 your risk.

2 I say this because he stated, as I
3 recall, that the short option positions --
4 excuse me -- the short call positions here were
5 what would cause you loss as the S&P rallied.
6 Is that your recollection on what that is?

7 THE WITNESS: That's correct.

8 MR. ZILIAK: And --

9 MR. SCHMIDT: To be fair, that's what
10 the witness testified to.

11 MR. ZILIAK: I was just going to ask
12 that.

13 MR. ZILIAK: And you, in turn -- you
14 also said that the short call positions were --
15 were what would cause your portfolio, all else
16 equal, to lose value as the S&P rallied?

17 THE WITNESS: Correct.

18 MR. ZILIAK: Looking at the set of
19 trades you made on CFTC Exhibit 7, if you
20 left -- you left all of these exactly as they
21 were but, in addition, had bought back not just
22 ten percent of your short calls but all of your
23 short February calls here, all 40,000, not
24 4,000 --

25 THE WITNESS: Yes.

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1 MR. ZILIAK: -- what do you think that
2 would have done to the delta in your portfolio?
3 THE WITNESS: It would have flipped
4 the delta to a much larger number long, which
5 would have created -- you know, in hindsight,
6 the market went up. But had it gone down, that
7 would have put an equal amount of risk in the
8 other direction of the portfolio.
9 MR. ZILIAK: Now, you are saying "an
10 equal amount of risk." Now, just to clarify, as
11 between two options, one making the exact trades
12 you made on February 10th, as evidenced by
13 Exhibit 7 of the CFTC, or, alternatively, making
14 those same trades, plus purchasing back all your
15 other short February calls, which one of those
16 do you think would have ended up -- would have
17 led to an overall portfolio delta that was
18 closer to zero?
19 THE WITNESS: What I did on February
20 10th.
21 MR. ZILIAK: Okay.
22 I think we are good over here.
23 BY MR. SCHMIDT:
24 Q Okay. Those weren't the only two
25 options open to you -- I'm sorry -- only two

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1 possibilities open to you on February 10th,
2 correct?
3 A No.
4 Q Okay. Is there any other option that
5 was opened to you that could have got delta
6 closer to zero than just the A or B option that
7 Mr. Ziliak gave you?
8 A Had my goal been to get delta to zero,
9 yes.
10 Q Okay. I am just responding to his
11 question.
12 A Sure.
13 Q I just want to know. Okay.
14 MR. SCHMIDT: All right.
15 BY MR. BENSON:
16 Q I have a few follow-up questions based
17 on the testimony you just provided.
18 Statistical process control, SPC, is a
19 topic that you just testified about, right?
20 A Yes.
21 Q So up until now you've given, we'll
22 call it, more than 20 hours of testimony, right?
23 A Sure.
24 Q Okay. The phrase "statistical process
25 control" or even the acronym SPC, that never

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1 came up once, did it?
2 A Well, I don't know how to talk about
3 it coming up.
4 Q Just yes or no. You never used those
5 words, did you?
6 A Oh, yes, I did.
7 Q Okay. So would you agree that the
8 statistical process control is important -- is
9 an important attribute of the manage- -- I'm
10 sorry.
11 Would you agree that the statistical
12 process control is an important part of the
13 futures fund management?
14 A It's a -- it's an important tool that
15 I use, yes.
16 Q Okay. So statistical process control
17 is an important tool that you use to manage the
18 futures fund, right?
19 A Correct.
20 Q Okay. Are you aware of any
21 disclosures to investors in the futures fund
22 that discuss the specific phrase "statistical
23 process control"?
24 A No, I'm not.
25 Q Okay. Are you aware of any written

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1 policies and procedures governing the futures
2 fund that use the three words "statistical
3 process control"?
4 A No.
5 Q Okay. Are you aware of ever giving or
6 receiving any training with regard to management
7 of the futures fund in which the words
8 "statistical process control" were used?
9 A No.
10 Q Okay. You participated in telephone
11 calls with investment advisors and
12 internal-external wholesalers at various times
13 from at least 2006 through --
14 MR. SCHMIDT: 2016.
15 BY MR. BENSON:
16 Q Sorry. 2016 to the present regarding
17 the futures fund, correct?
18 A Yes.
19 Q Do you recall ever using the phrase
20 "statistical process control" on any of those
21 calls?
22 A I'm not certain. I can't say for sure
23 I did not.
24 Q Okay. And Exhibit 112, which Mr.
25 Ziliak provided you, that does not use the term

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1 "statistical process control," correct?
 2 A It does not.
 3 Q Okay. There is reference on Page
 4 MFST00048398 of six sigma control charting,
 5 correct?
 6 A Yes.
 7 Q Are you aware that, when you hired Ms.
 8 Rios, one of the skills that you wanted to --
 9 that you discussed with her was reading charts?
 10 A I don't recall that.
 11 Q Okay. I believe you testified earlier
 12 that one of the benefits of OptionVue is that
 13 you're able to see charts that have various
 14 scenarios in one place, right?
 15 A Yes.
 16 Q Okay. And based on your 30-plus years
 17 of experience in the investment field, are you
 18 familiar with the concept of charting so that
 19 you can see how a fund performs over time and
 20 under various scenarios?
 21 A I've -- I've only been an investment
 22 professional for roughly 10 years -- 12. Sorry.
 23 MR. SCHMIDT: I think yesterday,
 24 though, you said that you've been investing for
 25 30 years, right?

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1 THE WITNESS: Sure, yeah. I think
 2 that is correct.
 3 BY MR. BENSON:
 4 Q Okay. I'm sorry. I didn't mean to
 5 say that you were an investment professional for
 6 years. You have been investing for 30 years.
 7 A Okay. Great.
 8 Q And in that 30 years of experience,
 9 have you become familiar with the concept of
 10 reading charts?
 11 A Yes.
 12 Q And that's -- that's a -- that's a
 13 phrase that's often used within the investment
 14 community.
 15 "Did you look at the charts on that
 16 stock? Did you look at the charts on that
 17 stock," correct?
 18 A Yes.
 19 MR. BENSON: Okay. All right. I
 20 don't think I have anything else.
 21 Do you?
 22 BY MR. SCHMIDT:
 23 Q Just one question.
 24 You said that, in early February,
 25 there were some extreme VIX numbers, correct?

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1 A Extreme changes in the VIX.
 2 Q Okay.
 3 A Opposites to the direction you would
 4 normally expect.
 5 Q And you would have seen that in your
 6 vega number that you got from OptionVue,
 7 although, you got that in a dollar value instead
 8 of a percentage, correct?
 9 A Yes. More importantly, I would have
 10 seen it and -- and did see it on the times I
 11 looked in terms of the projection that OptionVue
 12 gave me for the portfolio value, which was
 13 the -- the impact of the price increase plus VIX
 14 increase, again, because it's so unusual, caused
 15 the portfolio to suffer more so than what
 16 OptionVue had indicated.
 17 Q Oh, I -- I'm sorry. I -- I thought
 18 Mr. Wasserman spent almost a half hour asking
 19 you if you -- in this exact time period, whether
 20 you looked at OptionVue to see what the impact
 21 would be on the portfolio as a whole if there
 22 were changes in the market, and your response, I
 23 think -- and we can always check the transcript.
 24 But it was repeatedly: I have no idea
 25 whether I looked at and I can't remember.

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1 So now are you telling me something
 2 different?
 3 A No. My testimony was -- and he asked
 4 me how often I looked at it in this time frame,
 5 and I said not every day, but I certainly looked
 6 at it on two or three occasions. That's what I
 7 recall my testimony to be.
 8 Q But he specifically asked you multiple
 9 times whether you looked at it to determine the
 10 effect on the portfolio.
 11 A Yes.
 12 Q Okay. Didn't you just tell me that,
 13 during this period of time, that looking at the
 14 vega number would not only tell you what's going
 15 on with the VIX, but it's also going to tell you
 16 or did tell you, in fact, what's happened --
 17 what would happen to the portfolio as a whole?
 18 Did I mishear what you just said?
 19 A I think what I said was that the --
 20 the OptionVue result would have understated the
 21 loss based on the rise in the VIX.
 22 Q Do you know that, or are you guessing?
 23 Do you remember looking at OptionVue
 24 and looking at the effect that was predicted for
 25 the portfolio in this period of time, meaning

<p style="text-align: right;">Page 762</p> <p>1 February 1 through February 10? Do you 2 remember? 3 A Right. I did look at OptionVue during 4 this period of time, and I know from experience 5 with it that it takes into account the 6 volatility so that -- I don't recall 7 specifically. 8 Again, I -- my focus, as I testified, 9 was on the expiration line, but I do know for a 10 fact that, if volatility goes the wrong way, 11 OptionVue will have that effect. 12 Q I'm not asking -- that sounds to me 13 like you just have experience with OptionVue -- 14 A Yes. 15 Q -- and if that condition exists, 16 that's what's going to happen? 17 A Yes. 18 Q Okay. I'm asking you if you remember 19 in this period of time, early February -- early 20 to mid-February 2017, looking at OptionVue and 21 seeing what the effect would be on the portfolio 22 of certain market moves based on what OptionVue 23 is telling you. 24 Do you remember, or you don't 25 remember?</p>	<p style="text-align: right;">Page 764</p> <p>1 people -- do practitioners of SPC refer to 2 control charts or control charting? 3 THE WITNESS: Yes. 4 MR. ZILIAK: Okay. Would you call the 5 charts used for technical analysis control 6 charts or control charting? 7 THE WITNESS: They are a different 8 kind of chart. 9 MR. ZILIAK: Okay. So on that same 10 page Mr. Benson referenced in Exhibit 112 in the 11 FCC, where it says, "six sigma control 12 charting," to your understanding, would six 13 sigma control charting imply technical analysis? 14 THE WITNESS: No. 15 MR. ZILIAK: That's all I have. 16 MR. MORAN: Nothing. 17 MR. BENSON: Nothing. 18 MR. SCHMIDT: We are off the record at 19 6:58 -- sorry -- before we are, Mr. Walczak, 20 thank you for coming in. We really appreciate 21 it and staying for two days and answering our 22 questions. 23 THE WITNESS: Sure. 24 MR. SCHMIDT: It has been a big help. 25 All right?</p>
<p style="text-align: right;">Page 763</p> <p>1 A No. I -- I testified already that I 2 did -- I did not -- I do not remember looking at 3 that whole portfolio because I was focused on 4 nearby options expirations. 5 Q Okay. All right. I just want to make 6 sure you're not changing the testimony you gave 7 before. 8 A No. No. 9 Q It's the same. Okay. 10 MR. SCHMIDT: Anything else? 11 MR. ZILIAK: Could I ask just one 12 small question responding to -- to -- yes, just 13 the question there. 14 Let's see. On the subject of 15 charting, you are familiar with technical 16 analysis -- 17 THE WITNESS: Yes. 18 MR. ZILIAK: -- generally speaking? 19 And in the trading -- in the trading 20 sense, technical analysis often involves charts? 21 THE WITNESS: Yes. 22 MR. ZILIAK: You're also familiar with 23 SPC, correct? 24 THE WITNESS: Yes. 25 MR. ZILIAK: Do people on the -- do</p>	<p style="text-align: right;">Page 765</p> <p>1 We are off the record at 6:58. 2 (Whereupon, at 6:58 p.m., the 3 examination was concluded.) 4 * * * * * 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

PROOFREADER'S CERTIFICATE

1

2

3 In the Matter of: CATALYST HEDGED FUTURES

4 STRATEGY FUND

5 Witness: Edward S. Walczak

6 File Number: C-08400-A

7 Date: Wednesday, April 4, 2018

8 Location: Chicago, Illinois

9

10 This is to certify that I, Donna S. Raya,
11 (the undersigned), do hereby swear and affirm that
12 the attached proceedings before the U.S. Securities
13 and Exchange Commission were held according to the
14 record and that this is the original, complete, true
15 and accurate transcript that has been compared to the
16 reporting or recording accomplished at the hearing.

17

18

19 _____
(Proofreader's Name) (Date)

20

21

22

23

24

25

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